

AN
ABRIDGEMENT

of all SEA-LAWES;

Ol. II

GATHERED FORTH

N. 3 :

of all Writings and Monuments,
which are to be found among any people
or Nation, vpon the coasts of the great
Ocean and Mediterranean Sea :

*And specially ordered and disposed for
the vse and benefit of all beneuolent Sea-farers,
within his Maiesties Dominions of Great
Britanne, Ireland, and the ad-
iacent Isles therof.*

By WILLIAM WELVOD, professor
of the Cinill Lawe.



LONDON,
Printed by *Hamfrey Lownes, for Thomas Man.*

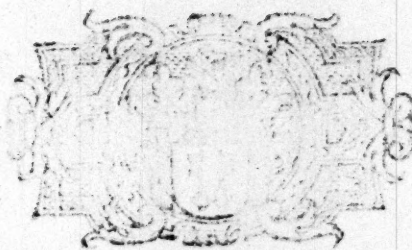
1613.

ARRIVED

ARRIVED

the number of the vessel
which has been sent

BY WATER



Printed by Messrs. G. & J. G. for the
1811



TO THE HIGH AND
mightie Prince, IAMES, King of Great
Britanne, France, and Ireland,
&c.

I*T pleased your M. some yeeres
past, most graciously to accept of
this birth, in the great weaknes
and infancie thereof. Therefore
is it, that now beeing strong, and by all war-
rants inarmed, it most thankfully returnes,
offring seruice to your M. euen for all the
coasts of your Highnes dominions, vpon hope to
merit your former grace.*

Your M. most humble subiect

and daily orator,

W. Welwod.

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To the right Honorable, *Ludouick*, Duke
of Lenox his Grace, &c. Henry, Earle of North-hampton, &c.
and Charles, Earle of Nottingham, &c. Lords Admiralls of
England and Ireland, of Scotland and the Isles,
and of the Cinque Ports.

Having intended a painfull & new labour,
vpon a rare & necessarie argument, as for
all Sea-farers, so also properly pertaining
to your Honors, my most noble Lords;
I could not but of due salute your Ho-
nors, as the keepers of Sea-lawes, for a
refreshing remembrance, & needfull con-
sideration of that most honourable estate
and high office, presently, and (I hope) happily allotted vnto
you: I meane, the Admiraltie of his M. dominions; a charge
both ancient from many hundreth yeeres in this Ile, and most
honorable by the personages your predecessors, bearing the
same: as beeing all, either sonnes, brothers, vncles, or coosins
to Princes, or (at least) for action most famous. VVith all the
which, that your Honors may the better rank & match, sure-
ly, as the condition of these daies craues, so the best disposed
with, that as you bee euery other way Noble, your nobilitie
may be crowned with a carefull attention to the speciall parts
of the Admiraltie requiring the same, to a memoriall surpas-
sing all ancestors: I meane the conseruacie, iurisdiction and
priuiledges therof. The iurisdiction, albeit it be most faithfully
and diligently exercised, and namely in England by Sr. *Daniel*
Dann, & Dr. *Trevar*, most learned, sincere, and woorthy col-
legues, Iudges in the high court there: yet the daily thwarting
& curbing of the processe of the Iudicature, vrges a clearing or
designing of the limits & marches, to a better distinguishing
thereof from all other iurisdicions ordinarie; without which,
due iustice can neither bee administred, concerning the sea cu-
stomes (of which no court else can take knowledge) for stran-

The Epistle, &c.

gers traffiquing here (importing no small staine to the king his iustice) nor yet for his M. lieges traffiquers on sea, whose contracts & charter-parties ordinarily beare the clause of ruling by law of *Oleron*; a forraine law, as all the other lawes of the Admirall court commonly are, whereof no other Iudicature here can take cognissance.

To end this point; Beside that which God in the heauens requires of the ministers of iustice, please you to remember, that heere belowe amongst men, *Nihil iustitia popularius*. Consequently therefore, the priuiledges due for the maintenance of the Admiraltie and iurisdiction thereof, would bee vindicat from all sort of encroching and vsurping. But aboue all, the conseruacie (as the chiefe point of that office) requires security and safety in common for all loyall subiects, traders on Sea: specially, for Fishers and others, happily disposed to aduenture and exercise the trade of fishing; to the end, that not onely a peaceable, but also a full and a plentiful fishing may be enioyed by the inhabitants of his M. kingdoms, euen according to that which God so freely and bountifully offers into their verie doores. For which cause, the barbaritie of the Ilanders would be repressed, and strangers stayed from scarring, scattrring, and breaking the shoals of our fishes; namely, vpon our coasts of Scotland. There could be no better employment for some (at least) of his M. ships and companies, *Ne vel illi vsque turbent, aut isti intercipient, quod nos capere oportet*.

But, I breake from this purpose, remitting the same to the Title of this booke; hoping for a comfortable out-bearing and maintaining of that necessarie and great dignity of the Admiraltie by your LL. according to all the occasions of these quarrellsome times. And so I rest, by this present token, deuote to serue your Honors in my calling.

William Welwood.

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ERRATA.

Page 66 line 6 for common read commune.



The Proheme containing the Origin of the Sea-law: with the occasion of this Treatise.



Concerning the Argument of Seafaring gouernment, so far as by any monuments can bee obserued, our beginning must bee at the inhabitants of the Iland called *Rhode*, situate within the *Mediterranean* Sea, in the part thereof called the *Carpath* sea, vpon the coast of *Asia minor*, ouer against *Caria*. The indwellers wherof, amongst all other people we can read of, were most famous for Shipping & Sayling; and that not onely to the great increase of their power and wealth euery way, as by which they did commaund and daunt all other people about their coasts and seas; in such manner, that neither Pirat, nor any sort of enemy, or disturber of their peace and traffique, durst then appeare^a: but also by the communicating of their trade, and discipline on sea, they did make neighbour Princes, and Cities, willingly Tributars vnto them^b. And further, as *Strabo* writeth^c to the crowning of their renowne, they surpassed all other Nations in knowledge of equitie in marine businesse; which they manifested by making of Sea-lawes.

For, the very Emperors of Rome, *Tiberius Caesar*, *Hadrian*, *Vespasian*, *Traian*, successiuely, did referre all

B

seafaring

^a Gellius. lib. 7.
cap. 3.

^b Strab. geogr.
lib. 12. ca. 14.

^c Ibid.

^a Vide II. Rhodior. in prin.

^b L. de precatio ad L. Rhod. et c. rhodiz leges. distinct. 2.

seafaring debates & controuersies, to the iudgement of the *Rhodian* law ^d. And so likewise exemplarlie, did their successor *Antoninus*, by his rescript yet extant ^e: wherein, answering to one *Eudemone* his plaint, I am (saith he) the Lord of the world, but the law is the master of the sea; let that thy plaint and controuersie *Eudemone* be decided by the law of the *Rhodians*.

So farre did the Romans (who alwaies excelled all other Nations, in deuising of humane lawes) yeeld & giue place to the *Rhodians* in the sea lawes.

^f L. 1. § licet, de exerc. act.

^g Suet. ca. 18.

And by their example, finding sea-faring and traffique on sea, redound to a great common wealth, as plainly prouounced ^f *Vlpian*, one of the fathers of their lawes; the Roman Emperors, and namely *Claudius*, ^g brought in new formes of actions, & deuised a kind of newe and sure commodities and gaine for traffiquers, by taking vpon them the hazard of shippe and goods: to which end also is erected by English lawes, the office of Assurance.

^h De situ orbis.

ⁱ Lib. 7. natur. histor. vide Ezechiam. c. 27.

^k Docimus in lib. suo legali.

It is true, that the first making of Sea lawes, is otherwise by some attributed to others, as by *Dionysius* to the *Phenicians*, because of Merchant trade ^h. And *Plinius*, for that same cause ascribes the Art of sayling to the *Carthaginians* ⁱ, and consequently, would seeme to attribute to these two Nations also for their necessitie, the skill of sayling. To be brieve, by the space of a thousand yeeres, the sea, at least the *Mediterranean*, was onely ruled by the *Rhodian* law, but helped vvith some few additions by the Romans, and that by way of interpretation: the rather, to occurre to the deceits and Sophistrie of calumniators and wilful vexers of their neighbors, as also for other needfull doubt ^k.

At

At last, when all sorts of lawes by the euersion and renting of the Romane Empire, was as it were for a long time buried, necessitie forced the Rulers of Rome anno 1075, to make new sea lawes and statutes: and so successiuelly, euery chiefe sea-faring towne vpon the *Mediterranean* coast, to adde other ordinances; as they of *Marseilles* did, anno 1162; and they of *Genua*, anno 1186. And they of *Peloponesus*, called *Morea*, anno 1200; and the common wealth of *Venice*, anno 1215. And the Emperours of Constantinople, *Paleolog*, anno 1262; and *Constantine*, 1270; and *Iames* King of Aragon that same yeere; and *Peter* king of Aragon, anno 1340; and they of *Barcelona*, anno 1434: which lawes beeing all collected and amalsed, serue the *Mediterraneans* vnto this day.

But on the great Ocean, which is our sea, the first lawes we knew to bee made, were deuised by them of the Iland of *Oleron*, situate on the sea coast of France, beside *S. Martin* against the mouth of *Charante* and the *Marras*, neer to the entry of *Garumna*: which are therfore called *La rool d' Oleron*; as by which the controuerfies on the sea coast of France toward the Ocean were ordinarily decided, in the towne of the said Ile, called therevpon, *La vile de droict*, or *Oleron*. As where the skilled Skippers in that law did dwell, and had cognition of all such occurrent debates and questions.

Now these lawes of *Oleron*, vvere afterward translated into Dutch by them of *Wisby*, for the sea vse of the Dutch coast.

And of late, our Kings of Scotland made diuerse Acts in Parliament, concerning sea-faring¹.

¹ Vide act. parli. Scot.

^m Vide statut.
Ang.

As also the Kings of England haue done before ^m: for *Edward* the third, by a solemne inquisition of eigh-
teene most famous persons for skill in sea-faring, as-
sembled at *Quinborow* from diuers parts, *anno* 1375.
set downe certaine articles concerning the Admiralty
and sea-faring, into old French: as may be seene in an
olde parchment autenticke booke yet extant; which
articles one *Thomas Roughton* of that same, turned af-
terward in Latine, and intituled *de officio admiralitatis*
Anglia.

Likewise *Frederick* the second of *Denmarke*, in his
generall conuention, at *Coppenhauen*, *anno* 1561. set
downe a compend of Statutes, for ruling of his Sea-fa-
ring subiects; but for most part all one with *La reule*
d' Oleron.

Also the French King *Henry* the third, added his
new constitutions to these of *François*, and others his
predecessors, which are chiefly for the authorising of
his Admiralty, Iurisdiction, honour and profits there-
of; preferring the Admiral and his officers to all other
Iudges and Iustices, except these called *Royals*.

Notwithstanding all these many, diuers, and late
Statutes and Ordinances made and set forth these sixe-
teene hundreth years, by the nations, people & Princes
aboue written, in the decision of causes, and iudging of
Sea-faring controuersies; that fragment of the *Rhodi-*
an law, extant and Latinized by *Simon Shardijs*, inti-
tuled by him, *Leges nauales Rhodiorũ & selectæ Leges*
Rhodiorum, with the interpretations and commentati-
ons, deuised thereupon by the olde Romane *Iuriscon-*
sults insert in the *Pandects*; together with the consti-
tutions made by the Romane Emperours, contayned
in.

in the *Cod* and *Novells* at large: as it were by common consent of Nations, obtaines the prerogative throughout all *Europe*; as in *Great Britaine*, *Germany*, *France*, *Italie*, and *Spaine*. Such is the force and authority of the *Ciuilt Romane Lawe* amongst all Nations *Christian*.

In which Countreyes, albeit there hath bin, and yet remaines a great number of professors and doctors of the *Roman ciuilt lawe*, who haue written largely thereupon; yet few or none hath taken in hand to write pertinently or expressly, vpon the lawes concerning *Sea-faring*, the traffique on *Sea*, and by *Sea*, with the duties requisite of euery *Sea-faring person*, of all sorts and degrees.

It is true that *Iulius Ferrettus* in his obseruant deuoir to the Emperour *Charles* the fift, prepared a discourse for the addressing of *Nauies* with conuenient and expert *Gouernours*, and all sort of necessities for hostilitie on the sea, intituled *de iure & re nautica*, but far off from our present Argument, as may be seene by the same of late published, *Anno 1579*. and dedicated to *Philip*, *Charles* his sonne, by *Exuperantius Ferrettus*, sonne also to the said *Iulius*.

Petrus Pekkins also a *Fleming Zelande*, hath learnedly commented vpon the titles of the *ciuilt lawe*, touching the *sea-lawes*; but more busied about the exposition of words then of the matter.

Likewise *Bennetus Straccha*, in his large booke *de mercatura*, interlaceth a learned title, *de nautis, nauibus & nauigationibus*, but commeth not close to this our argument; for he holds straightly within the compass of the *ciuilt lawe*, protesting also his pretermis-

ons and remissions of many chiefe matters to certaine Doctors, who also writes but *obiter* of the sea matters, and none speakes of the sea customes, which is our principall argument: To the end of which booke is annexed an halfe sheet of paper, bearing *consilia Roderici Suarij de usu maris & Nauibus vehendis*; a turne of small contentment.

'Tis true that *Simon Shardinus*, anno 1561. promised this same compend and collect of sea lawes forth of all lawes (which presently by Gods grace I intend) but by death preuented, could not performe it.

To conclude then, since no man, as I can vnderstand, hath set his pen to this my argument and purpose, for the due information of euery sort of sea-faring persons in euery order, whether Commanders, Iudges, Skip-pers, Mariners, Merchants, Passengers, Fishers, Ferry-ers, Watermen, &c. concerning their severall duties, priuiledges and powers, and all manner of things per-tayning or incident to sea and sea-farers; I thought good, after the insight and deepe consideration of all the lawes and ordinances afore said, to mend a weake piece of labour, which I intended many yeares since, intituled the Sea-lawe of Scotland; and to frame the same in a very harmonickall collection of all sea-lawes. And vpon the conscience of my profession of the ciuill lawe, hauing no employment or part in any Admiraltie, to publish the same for the vse of the Admiralties, and benefit of all beneuolent sea-farers; and that presently, because of the present vse thereof so requiring the same, as I now cleerely perceiue: that is to say; Because that whereas the most ciuill, wise, and politick nations, haue euen most carefully distinguished the Iurisdiction

jurisdiction of the sea from the Jurisdiction of the land in all respects: yet neuerthelesse some men prease alwayes, vpon what intent I wot not, to confound the same. And the multitude of these who doe acknowledge the foresaid distinction, as specially the Mariners, through ignorance contemne all other lawe but the rule of *Oleron*.

In these respects (I say) I haue with great paine and trauell, concluded the publication of this work; which if it please (as I pray) God to blesse with the own effect, I haue reward enough.

T I T. I.

The order of this Treatise.

AS the affaires of the sea concernes onely seafaring and medlers therewith: euen so all doubts differences and controuerfies, rising vpon the same, and their cases must also concerne the same persons, which are eyther chiefly Owners, Out-traders or hyrers, Masters, Pilots, Mariners, Clerkes, Merchants, Passengers. Of whom the owner is he, to whom the ship or any part pertaynes in property. The out-trader or hirer, he to whom as hirer or partner for a voyage or more, or a longer time, during the hyring and lease of the ship, the profits and commodities thereof redounds^a.

And the Master is he to whom the whole care and charge of the ship is committed^b. The rest are all known. Now their persons whiles happens all to fall forth in one man; as one to be Master, owner, and out-trader,

^a L. i. de exercit. cit. act.

^b L. i. ad l. Rhod.

trader; and againe to be all diuers and distinct: and therefore the actions to beare out accordingly. Likewise the cognition of their debates pertaines not to euery Iudge indifferently, but onely to the Admirall of the sea: which things this Abridgement shall orderly and summarily declare; beginning at the Iudge ordinary to sea-fare causes, the members of the Court, and manner of proceeding there: next, the persons ordinary in ships, with the fraughting therof, as belonging to the chiefe vses of shipping: thirdly, the power, duty and priuiledge of euery one of the foresaid in ships: fourthly, the manifold causes of losses and damage in sea-faring, with the redresse thereof: fifthly, the priuiledged ships, shipwracke, ships and things taken and found on the sea, or within the flood-marke thereof: and lastly, of Fishing, Fishers, Ferryers and Watermen, and Shipwrights.

TIT. II.

*Of the Iudge ordinarie, in Sea-faring
causes; with his iurisdiction,
and priuiledges.*

AS for the Iudge of the Sea, wee haue first to consider, how at the beginning of the Roman Empire, there was a speciall difference betwixt the persons to whom the charge of shipping was giuen, and them to whom the comandement of Fleets and Nauies was committed; and betwixt the persons who exercised the iurisdiction in sea-faring debates, as followeth.

For

For amongst the Romans in the beginning, first the builders, forthreakers, or furnishers, and preparers of Ships and Nauies with all necessaries (by a speciall ordinance called *Lex decia*) were stiled *Duum-viri nauales*^a; as the Gouvernours of these Fleets were called *Archigubernij*^b, and the Iusticiaries of sea-faring debates, *Magisteriani*: euen so amongst the Grecians, the Commaunders of their fleetes vvere stiled *στρατογ.* And after the Empire seated at Constantinople, *Magnus dux classis*, and *Drungarius magnus*^c, as the chiefe carrier of the Pinell or flagge. His stile afterward was *Admiratus*, from *Amiras*, a word of the Sarracens signifying an Ouerseer, or a Captaine on sea or on land; for *Mirar* is to see, as the Spanyard vseth it. From this word *Amiras*, commeth the word *Amirante* to the Italians for the Leader of their fleets, as well as *L'ami-raglio*: albeit they tearme their sea-faring Iudges, *Li consoli del mare*, and such like frō the same word Admirall, vvhich most part Nations of Europe vse in the same meaning; as first and chiefly France, where *Childebert* the first, one thousand yeeres sithence, instituted an Admirall as Captaine and Commander of his Armie vpon sea, like as he did then ordaine a Marshall for the gouernment of his *Gen d'armerie* on land. Onely the Spanyard called this Leader & Commander of his fleets and nauies, *Adelantado*: as who should goe before therest.

Briefely, the word Admiral, how-euer this day it be vsed or abused, for to signifie the chiefe shippe, which was *Nauis pratoria* to the Romans, as the chiefe Commander of the fleet; yet that word Great Admirall, notes properly the man whō the Romans called *Præ-*

^a Linius lib. 9.

^b L. Scius Saturninus ad S. C. trebell.

^c Vide fragmenta ascripta Polybio.

fectum maris, and the Grecians, *Thalassiarchoi*: to wit, the Gouvernour of the sea. And thus farre concerning names and styles for the Commanders, and Gubernators of ships, fleets, and seas.

But concerning the iurisdiction of the sea, and the exercises of iustice amongst sea-faring men; at first amongst the Romans, it was allowed to euery President on the coasts, and afterward other Iudges were specially constitute at the sea sides, called *Magisteriani*^d: but their Iudges were al countable to their higher Iudge, styled *Præfectus prætorio sublimissimus*, from whom was no appellation or aduocation^e.

Sithence, in these latter dayes, for the readier obedience to the great Admirall of the Sea, it is by common consent of Nations, successiueley agreed, that in consideration of the Admiralls their soueraine commandement, their speciall preferment, and power vpon the liues of men within the sea flood; that therefore they should also haue a soueraine iurisdiction onely proper to themselves, ouer all sea-faring men within their bounds, and in all sea-faring causes and debates, ciuill and criminall. So that no other Iudge of any degree, at least in Scotland, may meddle therewith, but onely by way of assistance; and that by commission and in difficile causes, as was found in the action intended by *Antoin de la tour*, against one *Christian Marteis*, 6. Nouemb. anno 1542.^f

In which iurisdiction, the first power necessarie, is to constitute a Vice-Admirall and capitaines to supply his absence on sea; as also Deputies, for particular parts on the coasts, with the Crowners to view the dead bodies found on sea, or found on the coasts thereof.

^d Vide Alberic. ad nouell. 17. & 24.

^e L. à proconsulibus. C. de appell.

^f Tom. 1. c. 555. regist. Scot.

of, and Commissioners or Iudges generall, for exercising iustice in his high court on land, with Clerks, Procurers, Doome-sayers, Marshalls, and other Officers, for the exercising of their saide iurisdiction both in peace and warre: and therefore to sit and hold courts where they please; to execute iustice, to imprison and relax; and to command the Kings prisons and boroughs their prisons, to receiue and keepe their warders and prisoners &c.

¶ L' Admirall
de France.

Finally, their authority shold be distinctly acknowledged in all things pertayning to sea-faring.

It is true, that in Scotland before the creation of our Admirall after the example of other Nations, the Deans of Gild were ordinarily Iudges in ciuill debates, betwixt Mariner and Merchant, as the Water-bailie betwixt Mariner and Mariner, like as the high Iustice was Iudge in their criminalls. Which actions all now falling forth betwixt the persons aforesaid, of due appertaines to the iurisdiction of the Admirall; & therefore his Iudge depute or Commissar, called Iudge Admirall, and none other, should sit, cognost, determine and minister iustice in the foresaid causes: as likewise vpon all complaints, contracts, offences, pleas, exchanges, assecurations, debts, counts, charter-parteis, couenants, and all other writings concerning lading and vnlading of shippes, fraughts, hyres, monie lent vpon casualties and hazard at sea, and all other businesse whatsoeuer amongst seafarers, done on sea, this side sea, or beyond sea; not forgetting the cognition of writs and appeales frō other Iudges, and the causes and actions of Represals or Letters of Marque: yea, to take stipulations, cognossans, and insinuations,

^h Vide diploma admirali-
or. in vtroque
regno. Vide
latè de off. Ad-
mir. Ang.

in the bookes of the Admiraltie: and to doe all other things without which the iurisdiction of the Admirakie cannot stand nor beare out; and therefore to arrest and put in execution, to inquire within & without liberties, by the oathes of xij. men vpon all offences^h.

As first, touching the reuealers of the King & countrey their secrets ouer sea, in time of warre.

Item, against Pyrats, their Alsisters or Abbettors, Out-treaders, & Receptors. Item, against fortifiers of the Kings enemies, & harmers of his friends.

Item, against the breakers of the Admiralls arrestments and attachements.

Item, against goods forbidden, & merchandise not customed, and yet shipped and transported.

Item, against the resisters of the Admirall his officers, in executing his precepts. Item, against the forestallers, regraters, and dearthers of corne, fish, drinke, fire-wood, victuals caried ouer sea.

Item, against pleaders before other Iudges than before the Iudge Admirall, in causes pertaining to his iurisdiction; as also against the Iudges cognoscing therevpon.

Item, against them which giue Sea-brieues, Testimonials, or such like, ouer sea, without power or licence from the Admirall. Item, against transporters and carriers of traitors, rebels, manifest transgressors, and fugitiues from iustice, ouer sea.

Item, against hirers and fraughters of ships of other Nations, when they may be serued by their owne Nation. Item, against such as cast in ballasting, sand, or what else, in harbours, or chanel, that may defile or spoyle the same.

Item,

Item, against ship and boat-wrights, extortioning the Lieges or subiects.

Item, against taking away the boigh from the anchor, or cutters of cables, or other tewes.

Item, against false weights and measures by sea.

Item, against shedders of other mens blood on sea, or any Port or riuer below the first bridge next the sea: or them who are lamed or hurt through faulty and ill geare in ship.

Item, against Customers or Water-bailies, taking more custome or anchorage than wont.

Item, against such as absent themselves from wappinshewing or mustering; which the Admirall may ordaine twice a yeere in time of warre, and once in two yeeres in time of peace, vpon all dwellers at Ports and Harbors, or within one mile neere therevnto. i.

i L^r Admirall^r
de France.

Item, all sorts of transgressions committed by seamen, ferry-men, water-men, as well in flood riuers & creekes from the first bridge, as on the seas; Fishers, Pilots, Shipwrights, pressed men contemning the authoritie of the Admirall: and after due cognition, to levie and apply to his owne vse the penalties and amerciaments of all transgressors aforesaid, as due vnto the Admirall; together with the goods of Pirates, felons, capitall faulters, their receiuers, assistants, attainted, convict, condemned, outlawed or horned.

Item, wayffe or stray goods, wreck of sea, cast goods.

Item, *deo dando*, that is to say, the thing, whether Boar or Ship, &c. that caused the death of a man, or whereout of a man did perish.

Item, shares, lawfull prizes, or goods of the enemy.

ficlike Lagon, that which was found lyand at the sea ground, and Flotson that is founde swimming vpon sea; and Ietson, which is cast foorth of the sea to the shoare and coast, with anchorages, beaonages, meare swine, Sturgeons and Whales, &c. and all fish of extraordinary greatnes, called regall fishes; vvhich all are allowed in great Britaine, France, and other noble kingdoms, to the Admiralls, by their Soueraigne; for the better maintenance of their estate, iurisdiction, & conseruacie on seas, riuers, floods, roads, ports, harbours, channels, sayling, fishing, and all trading there, as altogether and chiefly committed to the care, maintenance, and protection of the Great Admirall.

TIT. III.

Of the Admirall Clerke.

THe Clerk of the Admirall court, beside that he should bee very skilfull, faithfull, and giue his solemne oath therevpon at his admission: and beside the poynts of his office requisite and common to all Clerks of other Courts, he should haue diuerse Registers, as for congees, saueconducts, passports, sea-briefes; as without which no ship should passe to the sea in time of warre, nor yet to farre voyages in time of peace^a: which no other Iudges nor Gouvernors should giue forth, but the Admirall onely^b.

Item, one other Register for the reports of the Skipers and Captaines, at their returne to the Admirall also^c.

^a L' Admirall de France.

^b Eodem.

^c Eodem.

Item,

Item, one other Register for the names of Merchants, and Passengers, and Owners; for the Skipper is holden to giue vp the said persons by name ^d.

^d Secundu act. parliam. Jac. 5. cap. 27.

And because no man ought to take vpon him to bee a Master or Pilot without due triall of his skill: euen so ought his triall to bee registred in the Admirall his bookes ^e. But within the water of Thames, this triall and registration of Pilots, pertaines to the Trinitie-house ^f.

^e L' Admirall de France.

Lastly, all money lent to hazard vpon the sea, called of old *Pecunia traiectitia*, for certaine profit, called *Fœnus nauticum*, for the which the Lender was vvont to beare the peril, against the manners of these auaricious daies; their lendings (I say) and billes of assurance, should be done before the Admirall Clerk ^g.

^f Looke the Charter of the Trinitie house on Thames.

To conclude, no other Clerk or Writer, may meddle or pen things concerning the sea-faring, without licence of the Admirall ^h.

^g L' Admirall de France.

^h Kintor. art. 45.

T I T. IIII.

Of the Advocates and other Officers assistants, for the better and speedier proceeding in the Admirall Court.

FOr the more vpright proceeding, and easier dispatch of causes & plaints in the Admirall court, it is found needful that al Procurers, before they be heard, sweare solemnly first, that they should doe nothing maliciously; but as soone as they finde their action to be vnrighteous in any part of the process, they

they shall tell it to their client: and if the client will insist, then to shew it to the Iudge.

Secondly, that they shall not reueale their clients secret to the aduersarie, nor yet collude with him to betray their client. And lastly, that they shall propone neither dilator nor peremptor against their conscience^a.

^a Il consolato del mare.

To conclude, the oath of fidelitie is likewise to bee solemnly taken of the rest of the officers of court: for the due execution of their offices, namely, at their admissions^b.

^b Eodem.

T I T. V.

The manner of proceeding in Seafaring causes.

THe debates of sea-farers, and sea-faring actions, should be decided according to the receiued lawes and Satutes of the sea: vvhich sayling, then the customs and consuetudes of these are to be followed^a, because all dispositions and ordinances commonly take their interpretation from consuetudes and vses^b.

^a Per l. de pre-
ca^o ad l. Rhod.
Buld. in l. ob-
seruan. in §. an-
tiquam de off.
proconf.

^b Innocent. in
c. olim de verb.
Sig.

And if neither law written, or vnwritten custome, nor consuetude occurs or appears, the last refuge is to the opinions and sentences of skilled and vpright men in the profession and exercise of sea-faring; because it is old and common, that the iudgement of skilled and well practised men, should be followed in their owne trade and calling^c.

^c Per l. i. de
vent. inspic.

But

But in the manner of proceeding, it is a perpetuall^d priuiledge, *Quod uelocitato*^d. That isto say briefly^d and summarily, causes should be cognosced, and without the solemnitie of other ordinarie courts & iudgements, onely looking to God and the truth; so that the Iudge should doe, if it were possible, as God himselfe^e.

^d L. de submerfis C. de nauis. lib. 11.

^e Vide rotam genue, & DD.

Plaints then of sea-farers should be most summarily cognosced, but specially of shipwracke; for it were a crueltie to vex so miserable persons with the tedious ordinary proceedings of courts, in so much as they need not to put their petition in writing^f.

^f Bartol. Lucius et Iohannes ad d.l. de submerfis.

And because that sayling tends to a great commonwealth, therefore least sea-farers should bee wearied with pleas, & so either lose their right, or their trade^g, summarie processe should be common to them all.

^g Secundum l. illum de Pet. hered.

Which sort of processe is so vrged by the Doctors of law, that they counsell Iudges, who feare appellations or advocations, to preuent the same by a present execution^h; namely, in causes of spoyle or wrack: so that vpon euery interloquutor, they may proceede to execution, making restitution presently. Prouiding alwaies, that caution be first found by the spoyled, to satisfie the sentence of the Iudge of the appellation, in case it shall happen to be madeⁱ.

^h DD. in c. propositi. de tor. compet.

ⁱ L'Admirall de France.

This is also a priuiledge of the sea-faring Iudicature, that albeit by the common rules of the law, where no *Litis contestation* is past, no witnesse should bee receiued, *nisi ad aternam rei memoriam, ac aduersario ad id citato*; yet in shipwrack, as a case very pittifull, any of the ship-broken-men may come to the Iudge of that part where the wrack happens, & by witnes brought

^k Si quis. fo. C.
de naufrag.

^l L. Fin. ad l.
Rhod.

^m L. quoties.
de naufrag.

^{m m} Vide sta-
rut. Ang.

ⁿ L. de vno-
quoque. de re
iudica. et L.
quoties. C. de
naufrag. lib. 11

^o De l. quoties.

^p Il consolato
artic. 221.
et 222.

^q Consent of
all sea-lawes.

with him, proue the wracke and spoile^k; to the end that if any owner should pursue his goods, for to recouer them, he might be iustly repelled by an exception of an innocent losse^l: which should be done within a yeere and a day; namely, by such as were in seruice to the Prince & country^m.

The like is to be obserued also in causes of spoyle; where by the lawes of England, it is sufficient for the spoyler to proue his goods by his marke, &c^{m m}.

In which dooing, no citation is required; and that against the common lawⁿ: yea, the death of the ship-broken may not onely be proued by the rest liuing, but also by the persons, who were present at the preparation of their voyage, euen their owne parents and children, if none of the ship-broken be on liue^o.

And as this is a priuiledge extraordinary for such chances; euen so ordinarily may Merchants and Mariners sayling together, beare witnes each one to other of their societie within ship, if they haue neyther to lose nor gaine thereby; and namely Mariners, for or against the Skipper when the voyage is ended, and when they are free from his commandement^p. For by the consent of the Doctors, when the truth cannot be otherwise tryed, then vnhabable persons may be heard.

Item, to the end that this trade be not hindred by calumniators, and wilfull vexers of their neighbours vnder colour of lawe: it is provided, that not onely the common caution, *Iudicio sisti*, & *Indicatum solui*, be kept on the part of the defender; but also that the pursuer shall find caution, *de expensis soluendis*, if he faile in prooffe^q.

Likewise, in case the party pursued be contumax, and

& wil not compeire to defend himfelfe, or his fhip, or things challenged; namely, after three or foure citations directed from the high Court of the Admiraltie, called *quatuor defaulta* (for that citation called *Vnum pro omnibus*, is not fufficient to conuince one of contumacie) fpecially in the claime or vindication of a fhip, any part therof, or any other fuch like thing or goods; then may the Iudge ordaine his Marshall or officer, by his fentence called *primum decretum*, to put the plaintiffe in poffeffion thereof, at leaft to the worth of the fuit: Prouiding notwithstanding, that if the party compeir within a yeare and a day after, offering the expence made to the purfuer, and caution to obey the definitiue, he fhall yet be heard vpon the propriety. Otherwife, that time being fully expired, the Iudge may proceed and adiudge the propriety of the fhip to the plaintiffe^r.

^r De offic. Admi. Ang. in fin. cū ibi citatis.

Neyther is it needfull to execute fummons or citations in fuch cafes, elfewhere but where the fhip or quarrelled goods in queftion lies, or at the part vfuall of their haunting^r.

^r Ibid.

Further, as this way it is prouided for the fribbing and ftaying of calumniators in iudgement: euen fo it is ordayned againft maliciousneffe out of iudgement of fuch perfons who onely to hinder and ftay their neighbours, vexes them with needlefse arreftmnts; that vpon caution fuch arreftmnts be fpeedily loofed, except it be eyther for fraught already deferued, or mariners wages, or fuch cafes wherein by law the fhip is obliged; or elfe for feruice to the Prince: as alfo if ar-
reftmnt be vfed, eyther vpon goods, or mariner ready⁴¹ to faile, the fame may be loofed, vpon caution to make

^r Il confolet

forth-comming so much goods as the mariner hath within ship-boord^u.

^uDenmark.

TIT. VI.

Of persons ordinary in ships.

Touching persons ordinary for sailing in ships; they are of diuers orders, and therefore diuersly stiled: as first, he who beares charge ouer all the ship and kippage, is commonly called by vs, and most part of nations, both now and of olde, and specially by the Romane lawes, *Nauticularius*, or *Magister Nautis*^a: that is, as we speake, Master of the ship; by the Dutches, Skipper; and by the Grecians, *Nauarchus* or *Nauticlerus*^b; by the Italians, *Patrono*. But if the ship be a warfaring ship, the principall person is commonly called Captaine by vs and other neere nations. The next to the Master, is he who directs the ship in the course of her voyage, called by the French-men, Pilot; by Vs and the Dutches, Steersman; by the Romanes, *Gubernator*^c; by the Italians, *Nochiero*^d, *Pilotto*, and *Nauareus*, as *Ferretus* writes.

The third person is commonly called the Masters mate or companion, chiefly if the Master be Steersman himselfe: this man is called by the Grecians and Romanes *Proreta*^e: his charge is to command all before the mast.

The fourth person is he who attends vpon the mending of the faulty parts in the ship, called by vs and the Dutches, Timberman or Shipwright; by the old

^aL. 1. et passim ad l. rhod.

et l. 1. parag. 2. naut. caup.

^bVide l. semper de iur. im-

munita. et l. 3. C. de nauicu-

lar. Vide Vegetium de re militar.

^cVide leges nauales Rhodior.

^dIl. consolato.

^eVide dd ll. nauales, et Prautū in rudente.

olde Græcians and Romanes *Naupagus* or *Naupagus* ^{f: Vide dd. ll. selec. Rhod.}
 but by the late Græcians, *Calaphates*; for which cause
 the Emperour *Michael* was called *Calaphates*, because
 his father had beene a Shipwright in *Paphlagonia*; as
 witnesseth *Egnacius* and *Volateranus* ^{*}, and therfore ^{* Lib. 23,}
 the Venetians and Italians name their Timberman
Calafatte ^{g.}

The next person in order, is he who beares the
 charge of the ships boate, called by vs Boatsman; by
 the Italians, *Barcherie*; by the Græcians and Ro-
 manes, *Carabita*: for *Carabus* notes the boat of the
 ship. ^{h.}

The sixt person requisite in any ship of great bur-
 then, is a Clerke; by the Italians, *Scriuano* ^{i.}, whose of-
 fice is to write vp and make accompt of all things re-
 ceiued or deliuered in the ship, together with all the or-
 dinary & needfull expenses made vpon ship and kipp-
 age: who for his more faithfull discharge, should at his
 entrie be sworne before the ordinary Sea-Iudge; as is
 ordinarily practised in *Ancona*, & other parts of Italy ^{k.}

The seuenth is the Cooke, a most necessary mem-
 ber as long as there will be bellies.

The eighth is the ships boy, who keepes her conti-
 nually in harbours; called therefore by the Græcians,
Nauphylakes; by the Romanes, *Dietarius* ^{l.}; and by the
 Italians, *Guardiano* ^{m.}. All the forelaides are distinct
 in offices and names, and therfore accordingly should
 also be distinguished in hyres and fees, after the cu-
 stome of the countrey. The rest of the persons of the
 kippage, are vnder the common stile of mariners,
 which the Romans call *Nautas*: but they name those
 of the lowest and base degree, as may be the boyes.

^a Vide Budæ.
um ad l. 1.
naut. caup.

^b Vide l. debet.
parag. hæc a-
ctio. naut.
caup.

and prentises in ship, *Mesonauta*^a, and *Nautebata*, as who should be ready at command, to clime vpon the tewes, or to such common seruice in the ship^o.

TIT. VII.

The fraughting of Ships.

^a ll. naual.
rhod. select.
art. 20.

^b Vide Bartol.
in l. quod re-
rum. parag. Si
nauem. de leg.
1. argumento
l. Labeo. de Su-
pel. legat. &c.

^c Cap. 17. et
130. art. Iacob.
3. Vide de ll.
Rhod.

^d d. art. 20.

NO Ship should be fraughted without a charter-partie written & subscribed^a, contayning both the Master and Merchant, and the name of the ship, that no doubt may arise^b; and likewise, that the Master shall find a sufficient Steersman, Timberman, Shipman, and Mariners conuenient, Shipper-tycht, masts, sayles, tewes, strong anchors, and boat fit for the shippe, with fire, water, and salt, on his own expences^c. And this charter-partie, among all the western Merchants, and those of the great Ocean, vsually is made to performe all things requisite by the lawes of *Oleron*^d.

And if there be no Writing, but an Earnest, then the Merchant, if hee repent or rewe, loseth his Earnest: but the Skipper, if hee repent, loseth the double of the earnest or arles^e.

^e Art. 19. ll.
naual. Rhod.

^f Per legem
item. parag. Si
in lege. loca.

If the Ship be not ready at the day appointed in the charter-partie to goe to sea, the Merchant may not onely free himselfe of her^f, except hee hold his peace and discharge her not (for then by his silence hee appeares to consent of new) but also shal or may obtaine all charges, scathes and interest^f: Except the Master shew some excuse of a notorious necessitie, or of a chaunce

^f Oleron.

chaunce that could not bee elchewed: and then hee loseth only his fraught because hee hath not deserued it^e. But if the fault be in the Merchant^h, hee shall pay the Skipper and shippes damage, or according to the Rhodian law, shall entertaine the kippage and compaignie tenne dayes; and if then hee stay longer, shall pay the fraught of all accordinglyⁱ: and further, shall vnderwrite all hurt and damage hapning by fire, water, or otherwise, after the time appointed^k.

^e Per l. si, ex conducto, et l. si item fundus, et l. hæc distinctio et d. l. si in lege loca.
^h d. l. ex conducto.
ⁱ art. 25 Jegum naualium.
^k Art. 29. eod.

It is true, that the Rhodians charge the Merchant in this case onely with halfe fraught, & the Skipper with the whole fraught if he faile: albeit that the Romans inflict the paine of the whole fraught vpon the Merchant^m: specially, if hee take foorth his goods againe; for then is the fraught thought to be deseruedⁿ.

^m d. l. si in lege, et l. vlt. ad l. rhod. et d. l. ex conducto.
ⁿ l. vlt. locat.

But if the ship in her voyage become vnable without the Masters fault, or that the Master or shippe be arrested by some Magistrate in her way, the Master may either mend his shippe, or fraught another: but in case the Merchant agree not therevnto, then the Master shall at least obtaine his fraught, so farre as hee hath deserued it^o.

^o Oleron, et l. vlt. ad l. Rhod.

For otherwise, except the Merchant consent, or necessitie constrain the Skipper, to put the goods in another ship worse then his owne, the Master is holden for all losses and damage, except that both the shippes perish that voyage, & that no fault nor fraude be found with the Master^p. Also it is recounted for a fault, if the Master put forth the shippe to sea, either without a skillfull Pilot, or without sufficient furniture and necessities, according to the clause ordinary of charterparties, or that the other ship in which the goods were last

^p d. l. vlt.

^a d. l. item.

^r l. 3. de naufr.

C. Theodol. et

l. 3. de naufr. C.

Iustin. lib. 11.

^r Vide act. par.

^r l. vtiq. parag.

fin. et l. qui pe-

torio. parag.

fin. de vend. l.

item queritor.

S. si nauicula-

rius. C. locat.

& l. vlt. de

naufrag.

^u la rool d'

Oleron.

^x art. 25. leg.

naual. rhod.

^y Denmark.

last put in, be not sufficient, or that the Master hazard forth to sea in an vnlikely time ^a. Yea, in former times it was forbidden expressely, as by the Emperours *Gratian*, *Theodosius*, and *Valentinian*, to hazard vpon sea from Nouember till April ^r. As also by the Kings of Scotland, from S. Iudes day till Candlemas ^r. And alwaies it is accounted by the lawes for a fault, to make forth of a Port in time of a manifest storme ^r.

Item, if a Skipper set forth his shippe for a certaine charge, and then takes in any more, hee ought to lose his fraught iustly ^u.

And in such a case, when goods bee cast through storme, it shal not be made good by any contribution, but by the Skipper his owne purse ^x. And if hee ouerburden the ship aboute the birth-marke hee shall pay a fine ^y.

Item, if a ship Port at any other Port then shee was fraughted to, against the Masters will, as by storme, or some force; then the goods shall be transported to the port conditioned, on the Skippers charges: but this thing also must be tried by the oath of the Skipper and two of his Mariners ^z: or else the Skipper may bee in further danger.

Where also it is to be obserued, that for the in-going to sundry diuerse ports by the way, imports not a diuersitie or a multiplication of voyages ^{*}.

But if any man compell the Skipper to ouerburden ship or boat, hee may be therfore accused criminallie, and pay the damage happening thereby ^a.

Item, if any Skipper set his ship to an vnfree man, & not of substance, & other qualities prescribed by king *James* the third ^b, hee and his Mariners shall vnder-lie the

^{*} DD. in l. qui

romæ parag.

Callimachus.

de verb. oblig.

^a Lynica C. ne

quid oner.

pub. lib. 11.

^b c. 17. et c. 1: 7

actor. lac. 3.

the paines contained therein.

Item, if a Merchant put in more goods in ship than was conditioned, then may the Skipper take what fraught he please^c.

^c Il consolato del mare.

It is imputed for a fault to the Master, if he direct his course by waies either dangerous through Pirats, enemies, or other euillauentures, and holds not forth his due rout^d, and damage happen thereby.

^d l. pen. parag. si nauis. loc. et l. si pecuniam. de cōd. indeb. et l. qui fiscalis C. de nauicul. lib. i. et l. quā proponas de naut. foen.

It is likewise counted a fault, if the Master carry the pensell or flagge of other Nations than his owne, and thereby incurres scath and losse of any thing^e. For, as packquets, pipes, hogsheads, and such like, should be marked by the proper markes of the Merchants to whom they appertaine^f: euen so should ships bee discerned one from another, by their owne pensell or flagge.

^e Per l. quum proponas. ad l. rhod.

Item, if coffers, pypes, pakquets, &c. bee deliuered close and sealed, and afterward shall be receiued open and loose, the Master is to be charged therefore, vntill a due triall and consideration of that matter^g.

^f Per l. i. C. de nauib. non excus. et l. minime. de espisc. audien. § Bart. in l. in actionib. in fin de in lit. iurand. et in l. vnic. furt. aduers. naut.

The Master also must be answerable, for that harme which the rats for want of a cat doe in the ship to any merchandise^h.

^g Per l. item quæ. parag. si fullo. loc.

TIT. VIII.

Of the Master of the Ship, his power and dutie there-vnto belonging.

THe Master of the shippe is hee to whom the whole power and charge of the ship is committed^a: which power is prescribed, partlie

^a l. i. de exercit. act.

E

by

by the owner or outreader, & partly by the common law of the sea: as, to set her forth for fraught; to take in passengers; to mend and furnish the ship^b. And to that effect, if need be, in a strange countrey to borrow money with advise of the kippage or cōpany^c, vpon some of the tackle, or to sell some of the Merchants goods; provided, that the highest price that the rest of the goods is sold for at the market, be repayed to the Merchant: which beeing done, the fraught of that goods so sold and repayed, shall be repaid by the Master to the owner of the ship, as well as the fraught of the rest of the Merchants goods, except the ship perish in the voyage; in which case onely the price that the solde goods were bought for, shall bee rendered^d. And for no other cause, no not in the chance of shipwracke, may the Master take on or conquest mony, speciallie, by selling of Merchants goods^e. And thus far concerning his power.

As for the Masters dutie, hee ought first before hee loose or make saile, to seeke and obtaine the consent of the most part of the kippage or company; yea, if he be not very skilfull, hee should doe no other thing of importance without their advise: otherwise, hee shall vndergoe what-euer dammage happens by his dooings^f; and specially, if hee loose forth of any harbour without an expert Pilot^g, yea, or in the harbour the ship happen to fall ouer^h.

And as the Skipper his rashnes and vnskilfulnes is thus-wise corrected: euen so his negligence and sloth is to be punished. As first, by suffering the ouerlap and cowbridge to be vntichtⁱ, or the pumpe to be faultie, or a sufficient decking to bee lacking^k; and specially, from

^b d. l. 1.

^c Oleron.

^d Eod.

^e Eod.

^f Eod.

^g l. item Magister locat.

^h Oleron.

ⁱ Denmarke.

^k Leges naual. Rhod. art. 11.

from corne, victuall, & such like goods, which should be most carefully kept, and fenced from water and spoyling^l. Otherwise, the negligent Skipper is holden¹ Eod. art. 38. to make good all scath or dammage comming therby, beside that the fraught of such spoiled goods is lost; except that^m the ship or crear was open from the beginning, and fraughted without any ouerlapⁿ: which^m Art. 44. cod. two kinds of shippes, are tearmed by the Iurisconsult,ⁿ Vide l. 1. parag. quædam de exercit. *Emphractæ et Rephractæ*^{n n}.ⁿ d. l. 1. parag. quædam.

Further, this dutie is required of the Master, that according to the Act made by King *James* the third of Scotland, he giue vp the names of all persons transported in his ship, before he make saileⁿ: As likewise at his returne, the iust Inventarie of the goods of any persons^u c. 27. actor. per Iac. 3. & l'Admirall de Franc. which shall happen to depart this life in that voyage^o; L'Admirall. to the end, that not onely the lieges at home, nearest^p Il consolat. del mar. to the dead, may succeed to their right: but also concerning strangers so deceased, and their goods, that the same may bee put in sure keeping, forthcomming for three yeares space; but by the custome of England, one yeare, vntill the nearest of the dead-mans kinne come and claime the same^p. Of which goods in the meane-^q Eod. tin the bedding, with the pertinents thereof, may be of due taken by the Master and his mate, to their vses; as also such clothing, and other thing then presently vpon that persons body, may bee deliuered to the boatsman and seruants of the ship, as who ought therefore to burie, or cure at least, the ouer-putting of the dead in the Sea^q.

TIT. IX.

*Of the Masters dutie to the Merchant and
Passenger; and of his pri-
uiledges.*

THe Master ought to render againe what euer he receiues within his ship, to him who deliuered the same, as well victuall as clothing & merchandise, goods, or other thing ^a: where wee take goods to be deliuered, if either it be put in the ship, or in presence of the Master or Clerk as his deputie, layd to the ships side ^b, and both wayes, the peril to appertaine to the Master ^c.

Which thing also is extended to boatmen, and to the Ferryers ^d; and yet is it surest to deliuer goods before witnesse, and that either to the Master, Clerke, or Skipper his deputies thereto ^e; for the master is not holden for such thinges as are put in ship without his, and his companies knowledge ^f; because where men are found ignorant, they are also esteemed not to consent. But if the Merchant or Passenger keepe his goods by himselfe, as money or such thing in his coffers, and then alleage the lack thereof, then is the Skipper and his kippage onely to purge themselves by their oath ^f; but if afterward notwithstanding they be found guiltie, the denyer shall pay the double, and also be punished for periurie ^g.

Euen so, the Master is liable for all damage sustained through euill hookes, cordels, blocks or lines; namely, if the mariner foreshew the said things to be faulty: & alwaies.

^a T. T. naut. caup.

^b l. 1. in fin. eodem.
^c l. 3. eod.

^d d. l. 1. parag. 3.

^e Art. 12. li. nauarium.

^f l. 1. depositi.

^g Eod. art. 13.

^h Art. 14. eod.

alwaies the mariners shall helpe the Skipper in common to pay the said damage ^b.

^b Oleron.

Item, if any scath or damage happen to the Merchant or Passengers goods, through vnreasonable stowing or breaking vp, the master shall not onelie re-found or make good the same, but also lose his fraught, and twentie pound in Scotland to the King ⁱ, or his Admirall as his successor now; and for lacke of prooffe in this case, the skipper and his kippage shall be put to their oath ^k.

ⁱ Eod. et c. 17.
et c. 130. act.
Iacob. 3.

^k Oleron.

Further, what ever shall happen through fault, negligence or chaunce eschewable, or by the deed of passengers and others than himselfe or his kippage, the Skipper is holden to answere and pay for all, to the utmost penny ^l: for if such damage happen by a mariner, the Skipper shall re-found the double ^m, but he may repett it from the mariner ⁿ. But it is not so if the damage bee done by a mariner to another, except hee bee a Merchant also, or by a Merchant or Passenger to one another, then shall not the double be sought of the master ^o. Neither yet is the master holden for any thing without the ship, or yet within the same, if he duly forewarne each man to keep his owne goods, & they agree therevnto ^p.

^l d. l. 1. in fin. et
l. si vendita. de
peric. rei. v. ed.
et l. 5. et 6.
naut. caup.
^m d. l. 6. et l. 7.
eod.
ⁿ d. l. 7.

^o Vide d. l. 7. et
l. vnic. furt. ad.
naut. caup.
^p l. fin. naut.
caup. et per l.
itaq; de edi.
edict.

Such is the force of due protestation, according to the opinions of the most famous Doctors ^q; vvhich conditions aforesaid, are most iustly layd vpon the master, because he ought to hire good men, and no euill person in his company ^r: for it is in his owne free vvill to chuse his company, and hee should not be ignorant of the men he hath to doe with ^r; otherwise, if the master were not so obliged to all such duties & diligence

^q Bartol. et Iason in l. non solum parag. mortem. de nou. oper. nuc.
^r Instit. de ob. que ex delict. parag. fin.
^r l. qui cū alio. de reg. iur.

^r l. i. in fin. naut.
caup.

for the Merchant and Passenger, there should be great occasion of stealth and spoile ^c.

^u Scūd. fin. l. ult.
ad l. Rhod. & l.
quum proponas
C. de naut. fœ-
nor.

^x Accursius in l.
g. naut. caup. per
l. mela ad l. aq.
^y Per. l. itaq; de
furtis.

Lastly, if through the Masters fault, confiscation, or other damage happens, as for non-payment of the custome, or false billes of the goods customable, or for transporting of vnlawfull goods, the Master shall re-found the same with the interest ^u.

But concerning the pursutes of these aforesaid, as the Merchant may well pursue for the spoyled goods onely ^x: euen so may the Master pursue the stolen goods; as he who must onely, at least, chiefly, answer therfore ^y. And yet for all this, in case for want of these things, which the Merchant at the fraughting promised to be done at the entrie to the voyage, any of the aforesaid losses happens, and therwith the Master and foure mariners sweare no fault to haue been in them, the Master shall go free ^z.

^z La rool d'O-
leron.

^a Per. l. quantz:
de pub.
^b Per l. fin. pa-
rag. si propter
necessitatē eod.

And yet must we not ouer-passe this obseruation, that if the Master offer the iust custome, anchorage, or what-euer other dutie pertaines to any Customers, & hee, because of their vnrighteous refusall, makes saile, the weather and his necessitie so requiring, then may hee be iustly defended afterward against that Customer ^a. Neither yet should a ship that hath once payde her anchorages, pay againe, if shee be forc't through tempest back to the same port ^b.

TIT. X.

The Masters dutie to the Mariner.

Seeing the Master is the ordinary ruler ouer his owne kippage or company, hee ought to keepe them in peace so long as they eate his bread^a. ^a Oleron. And if any mariner hap to bee hurt in doing seruice, or by his companion, the Master shall cause him to bee healed, as he who is onely answerable for the fact of all within ship-boord^b; and then by his authoritie, re- ^b Per l. 1. de peit or recouer from the other mariner, the charges, ^{exerc. act. & l. fin. naut. caup: Art. 5. ll. naut.} with all that is lost to the hurt man thereby^c: except that hee who is hurt or lamed, haue prouoked the other by euident invasion, assault, or stroaks^d. ^d Art. 6. cod.

And if a mariner become sick, the Skipper shal cause him to be layde in a house, with all sustentation necessarie and vsuall in the ship, but shall not stay the shippe vntill he be healed; and when he recouers health, shall giue him his hire: or if he die, shall giue it to the wife or nearest friends^e. But if a mariner be not hurt in the ^e Per l. vlt. ad l. Rhod. shippes seruice, the Skipper shall hyre another in his place; who if hee draw more hyre, then that mariner shall refound the superplus^f. And alwaies the Master ^g Oleron. ought to lend his mariners if they lack^g. ^h Eod.

Item, if through the Masters fault, the ships boate perish with any mariners in it, as through spoyld tewes, &c. then shall the Master pay one whole yecres hyre to the heires of the drowned^h. ^h Art. 46. ll. naut.

Item, he ought to giue his mariners, flesh vpon Son-^{ual.} day, Tuesday, and Thursday; and vpon other dayes, fish,

ⁱ Il consolato.

fish, or such like, with sufficient drinke: but no meate to them that sleeps not in the shipⁱ. And yet the qualitic and quantitie of mariners food and hyres, goeth diuersly, according to the diuerse customes of countries, and the conditions made at the entry to their voyage.

TIT. XI.

*Of the duties and priuiledges of
Mariners.*

MAriners owe all due obedience to the Master, not onely in flying from him in his wrath so farre as they can, but also in suffering; yet may they after one stroake defende themselves. In case of rebellion of mariners against their master, which is thought then to be done, vwhen the Master hath thrise lifted the Towell from before any mariner, and yet hee submits not himselfe, then may hee not onely be commaunded forth of the ship at the first land, but also if hee make open strife and debate against the master, hee shall lose his halfe hire, with all the goods he hath within ship-boord^a.

^a Oleron, et il consolato.

But if in this strife a mariner vseth any armour or weapons, then should the rest of the mariners binde him, prison him, and present him to iustice; so that if any of them refuse to lay to his hand, and to assise, hee shall lose his hire, with all that hee hath within shippe-boord^b. Yea in case any number of the mariners wold conspire to force the Skipper to passe to any other Port, than to the which he was fraughted, then may they

^b Il consolato. cap. 160.

they bee accused criminally, and punished, as for a capitall crime ^c.

^c Denmarke.

And yet, if a rebellious mariner repent in time, and offer amends for a simple rebellion, and the Skipper notwithstanding refuse; he may follow the shippe and obtaine his hire ^d.

^d Oleron.

Mariners ought each one to helpe and assise others on the sea: or else hee that refuseth, loseth his hire; and the oath of his fellowes shall be a prooffe against him ^e.

^e codem.

Mariners in a strange Port, should not leaue the ship without the masters licence, or fastning her with foure tewes; or else the losse lights vpon them. They should also await vpon the ship vntill she be discharged, and ballasted new ^f, and the tackle taken downe.

^f Denmark.
Oleron.

And if a mariner, in time of loosing and lading, labor not with the rest of the company, but goes idle and absents himselfe, hee shall pay a fine to the rest, *pro rata*, at the Masters discretion ^g.

^g Denmark.

At least, the halfe of the kippage or company, ought in strange countrey port or roade to stay aboard: and the rest vwho goe a-land, albeit with licence, should keepe sobrietic, and abstaine from suspected places, or else should be punished in bodie and purse, like as hee who absents himselfe when the ship is ready to saile ^h.

^h Denmark.

Yea, if hee giue out himselfe for worthier then he is in his calling, he shall lose his hire, halfe to the Admirall, and the other halfe to the Master ⁱ: but this especially ought to be executed against an vnworthy Pilot ^k. The mariner also forfeits his hire, if the shippe breake in any part, and he help not with all his diligence to saue the goods ^l.

ⁱ codem.

^k codem.

^l Oleron.

If it chance any otherwise then well to the Master, the mariners are then holden to bring back the ship to the port from whence she was fraughted, without de-
^m *codem.* kty^m, except it be otherwise provided.

A mariner may cary as much meat forth of the ship as he may eat at a meale, but no drinkeⁿ.

A mariner may either keepe his portage in his own hand, or put forth the same for fraught: and yet should not the shippe stay vpon the preparation for his portage^o. So that in case the ship be fully laden before the goods for his portage be brought in, hee shall onelic haue the iust fraught of so much goods^p.
^a *codem.*
^{Il} *consolato.*

If a ship passe further then the mariner was hired, his hire should be accordingly augmented; except hee be hired, as the French man speakes, *a mareages, mais non a deniers*^q. If a mariner runne away with his hire vnderferued, he deserues the gallowes^r.
¹ *Oleron.*
² *Denmark, et Oleron.*

If a mariner be hired for a simple mariner, and afterward in the voyage findes hiring to be a Pilot or a Master, he may passe with prouision to render his former hire: euen so is it if he mary^s.
^f *codem.*

Mariners are not onely holden to loose and deliuer goods ouer-boord; but also if no porters nor caryers be in those parts, to cary the same themselves, for such hire as other workmen should haue had therfore^t.
^{Il} *consolato del mare.*

If it happen a ship to be prized for debt, or otherwise to be forfeited, yet should the mariners hire be paid; and if shee prosper, to receiue their pay in the same money that the fraught is payd with^u.
^a *codem.*

Lastly, a mariner should neither be arrested nor taken foorth of a ship making to saile, for any debt (but onely his hire, & as much other goods as he hath in the ship.

ship arrested therefore, according to the quantitie of the debt, and the master to be answerable for all^x: because the ship is compared to a mans dwelling house^y; and by the Ciuill law, a mans dwelling house is his most sure refuge^z) except for a sworne debt, or a penaltie to the King through some crime.

^x Oleron, Den-
marke. Kintor.
^y Bald. in l. cer-
ti iuris, loc.
^z l. nemo. de
reg. iur. et l.
plerūque. de in
ius voc.

TIT. XII.

Of the Clerke of the ship.

IN ships of great bulk and burden, a Clerk is most needfull: who beeing put in by men of chiefe power, and sworne solemnly before some Iudge, as the vse is in Italie (or at least before owners and mariners) that he shall write nothing but the truth, nor leaue ought vnwritten; being, I say, so constitute, neither Merchant nor mariner may put in or take out any thing of the ship without his knowledge. So that what-so-euer goods or other thing shal happē throgħ storme or otherwise, to be cast, stollen, or spoyled, that hath not been presented or shewen to the Clerk, it shal no way be vp-set by contribution, or any search made therfore. And if it come safe to land, the Skipper may take what fraught he likes therefore. Also the Clerke may take of that which is deliuered to him, and sell thereof for the ships need, but must satisfie the owner thereof: for hee must be alwaies countable of his receipts^a. But howsoeuer he doe, he may neither take in, nor giue forth goods by night, but in day light^b. *Vide*

Statuta Ang.

^a Il consolato.
^b L^a Admiral de
France.

TIT. XIII.

Of a Pilot or Steersman.

IF a Master hire a Steersman not onely for to guide his shippe in through shalds or other dangers at a time onely, but also for a whole voyage, and to be ready therefore against a certaine day, and he faile to keepe that day, he shall not onely pay Master and Merchants damage or stay, but also the fraught that is lost thereby: except sicknes, or some very lawfull excuse qualifie it^a.

^a Oleró, et arg.
L. ult. ad l. rhod.

A Steersman, after the time he hath brought the ship in sure harbor, is no further bound or liable; for then should the master see to her bed & her lying, and beare all the rest of the burden, charge, & danger: so that if before she come into the Port or some safetie, eyther she or goods perish or be spoiled, the Pilot makes good the same: yea, if his fault or ignorance be so grosse, that the company sees any manifest & present wrack to all thereby, then may they leade him to the hatches and strike off his head^b. Yea, if without any seeing danger, certain of the skilfullst mariners deeme that he is not so skilful as hee set himsele forth to be, then shall hee both lose his hire, and double the same to the Admirall and Master, or else passe thrise vnder the ships keil^c.

^b Oteron et il
consolat.

^c Denmark.

TIT. XIIII.

Of money lent to Sea, called Nauticum foenus.

GReat is the difference, or at least should be betwixt mony lent amongst men, to vse on land, and that money which is lent to Sea; for this money,

money is called *pecunia Traiectitia*, because that vpon the hazard of the lender it is caried ouer Sea. So that if the ship perish, or that all be spoiled, the money loses to the lender^a. But on the contrary, money on land is deliuered on the perill of the borrower: so that the profit of this, is the price of the only simple loane; therefore generally called *usura*: but the profit of the other loane is called *usura maritima*, or *sumus nauticum*, which is not the price of the loane, but of the hazard and danger which the lender takes vpon him during the loane^b: which is vnderstood to be to a certain day, or voyage, or what-euer of time agreed vpon. And therefore if the money mis-carry, eyther before the voyage begunne, or after the tearme appointed for the full loane; then the perill perteines to the borrower thereof, and not to the lender^c: I meane of perils proceeding from storms, violence, spoyle, or such like occasions, which cannot be eschued by any diligence of the borrower; and therefore in case the borrower imploy the lent money vpon lawfull goods, or that by his defrauding of the due customes, the same be confiscated, the lender is freed of such hazards^d. It is also to be noted, that money lent vpon the Sea, without hazard, and yet with security, should pay no profite, suppose it were vnbooked in the Clerks booke with the profit; contrary to that which is lent on land^e: so that albeit money be lent within the ship during the voyage, to the need of the company; and if before the day appointed for the rendring, shipwrack or spoyle happen, then should the losse come in contribution betweene them^f; because if that money had beene lying by the lender, still vnlent, it had bin in common

^a L. 1. de fœn. naut.

^b L. periculi. cod.

^c Vide passim dd. ll. de fœn. naut. & dd. ll. naual. Rhod.

^d Vide l. 3. C. de fœn. naut.

^e Art. 15. & 16. Leg. naual.

^f Art. 17. cod.

^g d.art. 17.

danger of shipwracke or spoile with the rest. But if the time appointed were past with the hazards aforesaid, then shall the borrower repay the borrowed money, free from all contribution ^g.

^h Art. 18. cod.

Further, in case the borrower deteines any such lent money as is aforesaid, beyond the terme appointed for the repaying, he shall at his returne not onely pay the profit agreed vpon before the voyage, but also augment the same according to the greater time, and yet shall not pay the profit of that first condition, but onely after the common rate ^h.

T I T. XV.

Of the Outreaders, or Ontriggers, Furnishers, Hyrers, and of the Owners of Ships, and of actions for and against them.

^a Parag. exercitor. inst. de ob. ex quasi delic.
^{T. T. naut. caup.}
^b cod. ibid.

^c d.l. 1. 2. & 3. cod.

IT is not onely permitted to him who contracts with the Master of a ship, or that hath any other action or claime against him as Master of the ship, to pursue him; but also the outreader, setter, or exercitor thereof, as him who placed the Master; and therefore ought to make good the Masters deede and fact ^a. This outreader we take to be him to whom the commoditie of the ship ^b redounds; so that he may lay his action vpon any of them; *Ne in plures aduersarios distrahatur qui cum uno tantum contraxit* ^c.

But the rest of the owners or outreaders shall relieue this man *pro rata*, of their portions; except the handling of the ship bee so severally deuided amongst

amongst them : or that the Master haue not his power and commission of them all ^d : or that the Master haue obliged himselfe beyond his commission ; as if hee haue taken on money to mend the ship, when as thee needes it not : or that hee haue no commission at all ; in which case the lender hath to blame his owne folly : for by the common rule of lawe , men should knowe well the persons and their conditions, with whom they haue to bargain ^e. ^{d. l. 1. & l. qui cum alio de reg. iur.} And yet in case euident need be of mending , and money be lent thereto ; suppose the Master should spend it otherwise, yet ought the outreader to satisfie the creditor ^f. But aboute all, that money which is lent for victuals to the ships company, should be repaid, as preferd before all other sort of debts ^{ff}. But a Merchant contracting with a mariner that is not a Master, shall haue no action against the outreader, except for a fault done by the mariner, specially if hee hath beene hyred and put in by the outreader.

Againe, albeit by the common lawe of the Sea the outreaders may not pursue persons obliged to the Skipper, yet are they permitted to pursue vpon the Masters contract, as they had bin contractors principall ^s ; because in such dealings he sustaines the outreaders person : & because of the great comon-wealth that is procured by this kinde of traffique ^h, worthily ^h such priuiledges to the outreaders and exercers of shipping are graunted. And yet is not the Master alwayes bound to satisfie all counts to the outreaders : specially, in case it happen some passengers to be *Non soluendo*, the master is not holden to pay for them, because

cause it becomes not the master, in the acceptation of Passengers, to search out so narrowly their meanes and abilityⁱ.

ⁱ l. 2. §. 6. d.

l. Rhod.

^k Oleron.

And again, the outreader is not holden alwayes to answer for the masters sloath, but for his owne selfe^k.

TIT. XVI.

Of sundry Partners of Ships, and their discords.

Moreouer, concerning the owners of the ship, in case they cannot agree amongst themselves to remaine in Partnership; seeing by the lawe they cannot be constrained thereunto^a: yea, not albeit a Paction had bin made neuer to sunder^b; then is there many considerations required in their sundring. And first, if their common Ship or Cray be put in building; or that she be but presently bought: in these cases it is thought conuenient, that she shall be imployed one voyage first, vpon the common outread and hazard, before any of these Partners be heard to sunder and discharge their part. And after that, if they cannot agree, he who desires to be free, should offer to the rest, and set his part on such a price, as hee will eyther hold or sell; which if he will not doe, and yet refuses to outread with the rest, then may the rest rigge forth the ship at their owne charges, and also vpon the hazard of the wilfull refuser, so farre as his part extends, without any count to him of any deale or part of profite at her returne^c: but they must

^a l. fin. C. pro socio. & pass. inst. & D. cod.

^b L. in hoc. parag. si conueniat. pro soc.

^c Denmark.
cum ll. hic seq.

must be bound to him to bring her home safe, or the value of his part.

And iustly; because that, as ships were inuented in common, for the vse of all men; euen of them that dwell in the mountaines, as on the coasts of the sea^d: so were they ordained and builded for sailing, & not to lie idle and vnoccupied^e. But if the persons, who haue most part of the ship, refuse to abide in partnership with him who hath a small part, that neither hee can sell his part at that price, without great losse, nor yet is able for pouertie to attaine to their parts, then are they all bound to put the ship to an apprailement^f. Otherwise, the scoffe which *Cassellius*, a Roman lawyer, vsed against two wilful partners of a ship, may also be vsed against such: that is to say, while they asked him by what way they might diuide and part their ship, *Cassellius* answerd; If ye diuide her, then neither of you shall haue her^g.

And if for lack and want of buyers in that place, the poore partner can neither eschew the oppression of the richer, nor yet the rich satisfie the poore man, perchance also wilfull; then may the Iudge ordinary deale and decree in this case, as he may *In omnibus alijs bona fidei actionibus*: that is to say, consider all the circumstances of the persons, their motions, the matter of their debate, with all the merits thereof, and make vp a full consideration of all together, that euerie man may obtaine and receiue his owne dew right^h.

^d l. arboribus
parag. naues
de vsu fr.
^e Glossa in l. si
nauis. et iurif.
in l. utiq; para.
culpa de rei.
vndic. et l. ar-
borib. parag.
naus. de. vsu-
fruct.
^f consolato.

^g Macrobius
lib. 2. c. 6

^h Secundum
citata, et Se-
cundū. l. bona
fides. Deposit.

TIT. XVII.

Of Casting of goods in a voyage, and the like; and of Contribution to be made therefore.

COncerning contribution or scott and lot, as we speake, it is ordinarie: & first, it is practised vpon ships so stormestead that for reliefe of liues and goods, casting of goods must be made. In that case the master shall consult with the marriners: who if they consent not, and yet the storme and danger continue, then may the master cast some goods notwithstanding^a. But if the merchant be present, let him begin to cast^b, and next the marriners: but if the marriner keepe back any part that should be cast, to his owne vse, he shall render the double^c.

^a Oleron.

^b Il consolato.

^c Art. 39. ll. natural. select.

But when afterward the master shall come to land, hee must with the most part of his company sweare that he did cast goods for no other cause but for the safety of ship, goods, and liues^d. Secondly, when goods are cast, they shalbe vpset & compensated by a contribution of Ship and such goods as are safe thereby^e: and not onely of goods paying fraught and burden-some, but of cloathing, money, iewels and such like^f, which are not weighrie.

^d Oleron.

^e l. 1. et 2. ad. l. rhod.

^f d. l. 2. et o. erō

^g eod.

For, it is most righteous, that the losse be common to all things which are safe thereby^g. Except things borne vpon a mans body, victualls and such like, put in ship to be spende, and therefore should not scott and lott, with other goods: in so much, that when they become scant and wanting, each man is bound to communicate

municate the same one to other^h.

But heere it may bee asked, whether yet should all kinde of cast goods, bee vp-set and made good by contribution, as for example, the goods transported about the ouerlap, and goods forbidden to bee transportedⁱ. Sure, if such goods happen to be the cause of any scathe and danger, the master who receiued the same within his ship, shall beare the losse and also be criminally pursued therefore^k.

^h d. l. 2.

ⁱ l. 17. et c. 130
act. or. Iacob. 3

^k Arg. l. Vnic.
C. ne quid o-
ner. public.

But if goods vnaduisedly, without consent of the owner thereof, be cast out, on the suddaine; then may hee himselfe vpon his conscience esteeme his owne goods to the iust worth, because the company hath that way by their rash dealing, lost the priuiledge they had to estimate that goods^l.

In like manner, the ship gear and apparell wracked by storme, importes no more contribution, then if a workeman break or spoile his work-tooles, or instruments in his ordinary work^m, except in the auoyding of a danger, as the heluing the maste ouer-boordⁿ, or the slipping of a Tow-anchor or boate vpō iust fear, or at the desire of the merchants^o. But that should be alwayes proued by the oaths of the ship-men: for concerning all facts within house or ship, credit must bee giuen to the domestickes and company familiar^p. Also if goods bee put in without the master and clearks knowledge; if they be cast, they shall haue no contribution^q.

^l Per. l. si fide-
ius. D. qui
satisf. cog.

^m d. l. 2. et l. na-
uis cod.
ⁿ l. amissz. e-
od. et Oleron.
^o d. l. 1. et il
cōsol. del. mar.

^p Per. l. con-
sensu. C. de
repud. et l.
quoties. C. de
nauf. et c.
ueniens. extr.
de testib. et c.
2. de probat.
^q Il consolato
del mar.

TIT. 18.

Of contribution for Pirates.

YF ship or goods bee redeemed from a Pirate, contribution shalbe made therefore, by all; because the redemption is made for the safety of all. But if the Pirate bee once Maister of all, and yet take but some speciall goods, whether from ship or Marchant, and not as a contentation for the sparing of the rest, it should appeare in this case that seeing the remnant is not safe hereby but freely spared, that no contribution should be made for the taken goods. For oftentimes Pirats take but things at their pleasure, and not of minde to spoyle*. Yet now adayes because this chance of taking at pleasure, concerns (in common iudgement) the rest of the goods as subiect to that same pleasure of the Pirat; therefore should it be also in common vpset by all to whom that chance is common.

*Vide latè. l.
2. ad. l. rhod.

TIT. 19.

Of contribution for spoyled and spilt goods.

YF through the losing of any cast goods, or vpō any needfull occasion, the remaining goods be spoyled either with wette, or otherwayes; a contribution shalbe made, proportionable for so much as they are made worse*.

*Vide l. nauis
4. ad. l. rhod.

TIT.

TIT. 20.

*Of contribution for lightning and disburdning
of ships for their easier entrie to the
Port, and for other chances.*

YF it be needfull to lighten a shippe of her bur-
den, for her easier entrie to Port or channell,
the two parts of the losse fall vpon the goods
and the third part on the ship; except that the ship sur-
passe in worth the loading, or that the charge of goods
be not the cause of her inhabilitie to enter, but some
bad qualitie proceeding of the ship it selfe^a: Or that^a Oleron.
otherwayes it be provided in the charter-partie, that
the goods shalbe fully deliuered at the Port couenan-
ted and appointed; for then condition makes lawe^b:
In which case it is to be also obserued, that if by occa-^b L. i. verse
sion of lightning, the goods which are put in the boate
or Lighter, perish, the ship and remaining goods in ship
shall vpsert the same. But on the contrary, if the ship &
remaining goods perish after the Lighter is once safe,
no contribution shall be set vpon the goods in the
Lighter: because the rule is constant, that onely then
should goods be liable to contributions, when ship and
goods come safe to Port^c.
^c d. l. nauis. et
l. amissa ad. l.
rhod.
^d Oleron.

Item, contribution should be for the Pilots fee, that
is taken in to guide her into an vnknowne Port^d; as al-
so to raise the Ship off ground when the fault is not in
the Maister^e.
^e Eod.

Euens so if two ships rush and crosse one ouer ano-
ther, and the company sweare their innocencie, as that
it lay not in their power to stay the same, contribution

^f eod. et l. quē-
admodum.
parag. si nauis
ad l. Aquil.

^s d. l. quem-
admodum.
parag. si nauis
ad l. Aquil.

^a Art. 3. 6. 11
naual. rhod.

¹ Inst. in pr.
quib. mod. re
contrah. ob.
te. l. 2. si cert.
peti.
¹ l. quod con-
uenit de verb.
ob.
² Vidd. l. in
menauē.

must bee made for one equall vplet of both their los-
ses^f. But not so if one of them perish ; because of that
mishap there can be no due proportion of the losse: for
if it were otherwise, a malicious Skipper, might of pur-
pose set an old weake ship against a strong ship, in hope
of some vplet and recompence. And yet for redresse
of the lost shippe, an action may bee to the owner,
against the negligent Master, or the Mariner who lo-
sed her, or cut her cable^g: which action is called *Legis
Aquilie*, for damage and scathe done. And therefore if
such a chance befall in the day light, by a ship vnder
saile against a ship riding at anchor, then the Master of
that sailing ship, shall make good the dammage or
scathe of the other, to the extremity: and the like shalbe
done, if in the night the ryding ship hold fire and light
forth, or make any crying to forewarne the other.

It also pertaines to this argument, if some sort of
goods, as salt, or corne, be laide on heap by diuers part-
ners, into a ship without distinction, & that the Master
deliuer to any of them their dew measure, and before
the rest receiue their measures, the remaining salt or
corne, washes or looses, he that had the good luck to
be first serued, enioies it fully without any contributiō
to the rest of the partnersⁱ: because when this goods
was put into the ship, it was deliuered to the master,
tanquam in creditum; and so he is become owner, as
of lent money: which men are not holden to render in
the self same pieces, but in valour or such like coyne^k;
except their be som other condition past before: which
in all affaires maketh law^l. Neither can this be imputed
for any fault to the master, because of necessity he be-
hooueth to make deliuerie to one, first, before ano-
ther^m.

TIT.

TIT. XXI.

Of the common manner of contribution,
and execution thereof.

IN setting of contribution or rates, things must be estimate in manner following.

First, the goods cast, spoiled, or rest; to the price they cost, if their chaunces did happen before midde voyage: but if after the midde voyage, then to the price, the rest of the same goods attain to at the market; because there is heere a consideration, rather of losse and scathe then of any gaine^a. And because damage and losse should be drawne as it were in streite, and gaine and vantage spreadde forth and extend, according to *Harmenopolus* sentence; spoyled and lost goods should bee set to the common worth, and not after mens affections^b: except only in goods vnaduisedly cast: wherein for the correction of the rashnes of the casters (as who thereby appeare to haue amitted their owne priuiledge) the estimation of the goods is permitted to the conscience of the Merchant or owner thereof^c. *Vide supra tit. 17.*

Secondly, concerning the Persons, whose losses are vnder contribution, he should first deale with the master, to retaine all the same goods on the bottome of the ship, in his keeping, vntill the rate be set and execute^d: or else may omitte all other persons, and pursue the Skipper *ex conducto*: which also ceases, if the cast goods be found againe^e.

Lastlie, concerning the Maister of the Ship his priuiledge

^a l. 2. in fin. ad. l. rhod. et il. consolato.

^b d. l. nauis et. l. pretia. vbi bartol. vt ad. l. 7. C. de prog. militar. lib. 12

^c Per. l. si fide. iussor. Qui. satisd. cog.

^d l. 2. ad. l. rhod.

^e d. l. 2. in fin.

uiledge, it is not onely vpon the detinew, and keeping of the goods and geere brought within his ship, which are thought as by a priuie band to be oblied and giuen him in pledge for the fraught, by common consent of lawyers, but also for the due and timely satisfaction of such contributions; because the imposed taxation, as likewise the fraught, is thought to stick firmly to the said goods: and therefore the Master may holde his hand thereon, vntill satisfaction bee made^f, albeit that commonly the withholding of other mens good be not allowed^g.

^f l. 1. de dol.
mal. excep. et
l. si non fortē.
de cond. in de.
^g l. 1. parag. re-
diguntur.
D. quod vi
aut clam.

TIT. 22.

Of priuiledged ships.

Shippes or boats seruing the Countrey, or the Prince, haue great prerogatiues. For first they go free from all Imposts, Customs, and Arrestments^a, not only in forth-going but also in their return, according to *Frederick* the Emperour his constitution^b. Yet if a Skipper seruing the Prince or Countrey, willfully falles on coasts and by-courses where hee should not, to their hurt and hinderance, hee merits death^c: & the commanders or officers in chiefe partes, who wittingly suffer such Skippers to lie and slugger, incurre a forfeiture of all their goods^d.

And if any man shall force the Skipper of these or any other ships to take in more than his iust charge, not onely should he vpsert all hurt and losse, but also bee publicly punished^e.

And as these are the conditions of ships seruing the Prince,

^a l. 1. de nauicul. c. lib. 11

^b Auth. ne filius pro patre.

^c l. 5. de nauicular. C. lib. 11.

^d l. ult. eod.

^e Art. 49. II.
selectar. naual.

Prince; so is it to be knowne that all sorts of ships are
subiect to this seruice, vpon command^f: otherwise in
case they refuse, their ships shall be confiscat, except
they report a testimony from the Admirall of very
lawfull excuse^g.

Yea, further is to be noted, that Masters of ships and
Ferriers once so professed, are bound to serue as well
subiects in common, as the Prince^h; except they haue
left the trade, or be vnder a safe conduct, or haue taken
in moe, then they can well carie a ship-boordⁱ.

And this is a common priuiledge to all sort of loa-
ded and burdened ships, to haue the neereft place to
the shore, for their discharge and vnloading; and ther-
fore the ships lightened, to giue them place^k.

Lastly, euen the persons who build, purchase, or
dresse ships expressly for a common-wealth to their
Country, are accounted amongst the priuiledged^l: yea
the frequenter of sayling are also priuiledged in all
Courts^m.

Vide Tit. de
nauib, non ex-
cusand. C.

g de offic. ad-
mir. Ang.

h Albericus ad
tit. naut. caup.
& in l. vnic. furt.
adver. naut.
caup.

i Bart. & Bald. in
d. l. vnic.

k Wisbie c. 10.
l Qui nauim
de priuileg.
creditorum.

m C. Innocenti-
us. de for. comp.

TIT. XXIII.

Concerning Shipwrack.

STrangers incurring shipwracke in Scotland,
should haue the same fauour of vs that we vse to
receiue of them in the like case^a; so that no
confiscation should be vsed against them, except they
vse to doe so to vs, or that they be very Pirates, or eni-
mies to Christianity^b: otherwise, who steals any such
miserable goods shall pay foure-fold to the owner, if

a 13. 8. actor.
Iacob. 1.

b L. 1. C. de nau-
frag. & auth.
naufragia. C. de
furt.

H

he

^c l. 1. in pr. de
incend. ruin. l. in
cum cum auth.
seq. de furt.

he be pursued within a yeer and a day^c; and as much
to the Prince or his Admirall: yea, the onely stea-
ling of a naile, or the worth thereof, maketh the
thiefe guilty of all, to the rendring of all the remaining
goods^d.

^d l. 2. in fin. de
incend. ty. naufr.

Yea, by the Emperour *Antonius* his ordinance, this
thiefe or robber of such goods should be battoned, and
banisht for three yeares, if he be of any honest ranke;
but if he be base of condition, should be sent scourged
to the Gallies or metall mines^e.

^e l. Pedius 4
cod.

And if any man should be so cruelly wicked, as to
hinder the ship-broken men from helpe in danger, hee
shall be recounted for a murtherer^f.

^f Arg. l. Saccu-
larij de extra-
ord. crim.

^g Gaius l. 5. de
rer. diuis.

^h Tom. l. regift.
Scot.

And therefore may no man hinder ships from forth-
laying of Tews and Anchors vpon land^g: as was deci-
ded betwixt *Couper* and *Seagy*, anno 1498. mense
July 8.

In like manner, if any man should be so accursed as
to hold forth Lanterne in the night, of intention to
draw on ships to a danger, in place of a good port or
harbor or safe roade, that wicked person should be pu-
nished to the death^h.

ⁱ Per d. arg. l.
Saccularij.

^j Per l. 10. de in-
cend. ruin. naufr.

^k l. ne pisca-
tores. cod.

Yea, though no harme happen, yet may the
Admirall punish him at his pleasureⁱ: And therefore
euen Fishers are forbidden to fish with light in the
night, lest that Sailers thereby be deceiued with the
false shew of an harbourⁱⁱ.

^l l. ne quid. eod.
& auth. naufra-
gia. C. de furt.

But for the better eschuing of these cruell euils,
Hadrian the Emperour ordained, that all men hauing
possessions on the coasts, should attend carefully vpon
such chances; otherwise, to be answerable for all things
missing by stealth or robberie^k.

Item

of all Sea-lawes.

xi

Item, if no man in due time claime such a wracke,
it fell of olde to the Prince his customers, according
to that of *Hermogenes* and *Fortunatianus*¹, *Naufragia* ^{1 m. Cod. The-}
ad publicanos pertinente; but now adayes to the Ad^o.
mirall, by the Princes graunt.

But concerning the action for shipwracke, it should
be intended within a yeer and a day^m, and sped by the
Iudge within two yeare^m. ^{1. si quis. C. de naufrag. lib. 11.}

Where it is to be marked, that if the ship onely per-
ish and the goods are safe, in that case the goods shall
pay the fift or the tenth pennie, according to the easie
or difficult winning and sauing of the said goods^o. ^{Art. 37. leg. naufrag. lib. 11.}
for gold, silke, siluer, and such like things of easie trans-
portation, should pay lesse then goods of greater
weight & difficult transporting, as being in greater ha-
zard: except the Skipper carry in his ship to a port or
part where he should not, nor the Merchant would
not; for then is the Merchant free of all the Skippers
losse, and no way should vper the spoyled or bro-
ken ship. ^{Art. 40. cod. Submersis. cod.}

But in cases of wrack, the lawes of England are also
to be scene: as, *Westm. 1. 3. E. 1. vid. prerog. regia 12.*

TIT. XXIII. Of things found upon the Sea, or within the Sea.

Of things found upon the Sea, or within the Sea.
Hippes, goods, or geare, or whatsoever other
things found within the Sea or flood thereof, are
of three sorts; either found on the streame flow-
ing,

things, and then are called Floatson: or found on the Sea bottom, and drawne vp from the same by Dounkers & other means; and then are called Lagon: or found on land, but within the Sea-flood, as cast forth there by storme and the water; and then are called Ietson.

Concerning Floatson & Ietson, whether things be cast vp by ship wracke, or else left as lost through casting in stormes; the finders therof, as some Lawyers thinke^a, should do therewith as with other goods found vpon land: that is, to proclaime the same to be forth-cōming to the iust owner; because the loser or tynner of such goods remaineth still owner and proprietor thereof^b; and if no man claime, the finder to keepe it to himselfe if hee be poore^c. But according to the olde Rhodian law, whether the finder be rich or poore, he may claime, or rather reaine the fift part, for the safe keeping^d. If a Dounker find drowned goods vpon eight cubits deepe, he gaines the third part; and if on fiftene cubites, then he obtaines the halfe; but vpon one cubite, onely the tenth part^e.

Yet if the finder be rich, and hath found goods by chance, he should rather giue it to the Church or poor, as some say^f.

But now adayes this goeth farre otherwise; first, because persons endued with the superioritie or signiorie of any part of the Sea-coast, doe claime all or a part of these things, whether cast forth of ships or otherwise comming vpon their land^g; which otherwise before was allowed to the finder^h.

Even so when ships or boats were found on the Sea, or at the coast therof, without any living creature ther

^a T. de Don.

^a Faber & alij
inst. de rer. diuis.
§. pen.

^b Per l. Pomponius, parag.
fin. de acquir.
rer. dom.

^c Faber d. parag. pen.

^d Art. 45. & 46.
l. naval. Rhod.

^e l. de re. mar.

^f l. de re. mar.

^g dd. art.

^h Auth. omnes
peregrini com-
munia de suc-
cessionib.

^g Oleron.

^h Epd.

in, & no man claiming the same for the space of a yeere
 and a day, then was the halfe allowed to the finder, &
 the remanent to the Prince, as a derelictⁱ: but since the
 erection and constitution of Admiralls, this kind of
 found goods are diuersly parted; for in France, the
 King draweth a third, the Admirall a third, and the
 finder a third^k. And of old, in England, although
 such things were diuided twixt the Admirall and the
 finder^l, yet now they are left to the arbitrement of
 both Admiralls in England and Scotland, to consider
 the finder or taker with a condigne portion, for his tra-
 uels, charges, and hazard in all circumstances^m; euen
 with the halfe at least, according to that vvhich Try-
 phonius sets downe, concerning thinges found on
 landⁿ. Yet, if the finder conceale such goods, whether
 anchors, timber, iewels, dead-men with money or
 iewels about them, &c. hee not onely loseth his iust
 part, but may be also fined at the will of the Admirall^o.
 And thus farre concerning things found by the labor
 and trauels of men.

ⁱ Vide statu. re-
gis Alex. Scot.

^k L' Admiral de
France.

^l Vide de off.
Adm. Angl.

^m Per diplo-
mata.

ⁿ l. Si is qui. 63;
in fin. de acq.
rer. dom.

^o L' Admiral de
France. et d.
depl.

If Whales, great grosse fishes, ships, or boats, with-
 out any living in them, by force of wind and waues
 onely, be driven to any coast or land, then all & whole
 appertaines to the Admirall: and so generally, all casu-
 alties what-so-euer^p.

^p Per dd. diplo.
et de off. Adm.

TIT. XXV.

Of things taken vpon Sea.

NOW followeth to treat of goods taken vpon
 Sea; which are of three sorts: for either they
 are taken from Pirats, & sea-thiefes; or from

professed enemies in lawfull warfare; or from such as not professing open warre, allowes taking rest to bee exercised against vs. Which kind of taking, is couered with the title of letters of Marque, called *Ius represaliarum*.

And first, touching that which is taken from Pirats, sith the goods which they haue wrongfully taken from others, whether they be found in their owne, or in their successors possession, are esteemed to bee a iust prey to any taker, so that account be made thereof to the Admirall: in case the taker find the goods of his countryman or friend with the Pirat, hee should make the same forth-comming to the iust owner claiming the same; his cost, charges and hazard, beeing alwaies considered and allowed: so that if any man buy or redeeme his neighbors ship from a Pirat or enemy, hee must receiue the price thereof from the owner. But if no man claim the goods taken from a Pirat, then should the same bee deliuered to the Admirall, who ought to consider the taker vvith his due part thereof.

If a ship or goods be taken by a professed enemy, who hath not brought it *in praesentia vel locum tutum*, for the making of a prescription, or a right, and afterward the same is taken backe, and recouered by any friend, and the iust owner claime the same, it ought to be restored to the owner; for that by the law, *Huiusmodi res non tam capta quam recepta intelligitur*^c. But when such goods become a iust and lawfull prize to the taker, then should the Admirall haue a tenth part: for so of old, the tenth part of lawfull spoile, was offered to God, in a manner; as we may learne by that which

Abraham

^a Per l. Pomponius de acq. rei dom.

^b Per l. mulier. de cap. et post.

^c Per d. l. Pomponius, et per l. in bello. parag. si quis seruum in pr. de capt. et post.

Abraham returning from the victorie ouer five Kings,
offred to *Melchisedeck*^a: and the remnant of the spoile^d Gen. 14.
should be proportionally diuided amongst the takers,
according to the law of God, set down by *Moses*^e, and Deu. 20.
practiced by king *Dauid*^f; and yet not onely amongst 1. Reg. 30.
ships, but also amongst seuerall persons, according to
euery man his proued trauell and hazard^g. So that the
ship that sets no saile, fights not, nor hazards not with
the rest, should haue no part with the rest, thereof^h.
Prouided alwaies, that first and formost, the prisoners,
captiues, and taken goods of preyes, bee in due time
presented to the Captaine, to be disposed by the Ad-
mirall: so that if any man breake bulk, meddle, or dis-
pose of any of those goods before, he may be punished,
and the receiver or buyer prisoned, vntill caution be
found, that these goods shall be forth comming to the
Admirall, and iust owner, according to a decision past
betwixt the king of Scotland and Maubray, anno
1487. 17. Iunijⁱ.

^g c. dicat aliquis.
parag. 23. q. 5.
et c. ius militare
dist. 2.
^h L' Admirall
de France.

ⁱ Tom. 1. c. 24.
regist. Scot.

If two forraine Nations be at warre, and the one
take a ship from the other, and bring her into a Port
or road within the bounds of a neutrall Nation, alike
friend to both, then may the Admirall of that neutrall
Nation ordaine that ship so taken and brought with-
in the said bounds, to be restored to her owner; and
the persons captiues, to their former libertie, euen as if
she had been brought back to her owne port & coun-
treie againe^k.

^k Per l. post-
liminiu. parag.
postliminio. de
cap. et postlimi-
^l Per l. libertas.
de reg. iur.

Besides that, generally in all cases, the action & cause
of liberty, as priuiledged, should be fauourably con-
sidered^l: and it is the honorable practice of Princes, to
make their countreyes an *Asylum*, or sanctuary, to all
distressed.

distressed strangers that be not Pirats.

^m Deut. 24. 16.

ⁿ 2. Reg. 14. 6.

et 2. Chr. 25. 4.

^o Ierc. 29. 3.

Ezech. 18. 20.

Lastly, concerning letters of Merque, as we speake, or *droict de Merque*, as French-men tearme it, *sive ius represaliarum*, and goods and things taken vnder that title vpon sea; surely, as farre as wee may, wee should prease to keepe Gods law set down by *Moses*^m, practised by king *Amasia*ⁿ, and confirmed by the Prophets^o: that the father should not be punished for the sonne, nor the sonne for the father, but a difference to bealwaies put betwixt the guiltie and the innocent. Which thing moued Emperors to make constitutions for the repressing of represalies in certaine respects^p.

^p Vide authent.
imo. C. ne fili-
us pro patre.

Notwithstanding, if our patience bee so oppressed with the increase of robberies, spoyles, and violence vpon sea, by men falsely professing friends, in such sort that vpon no supplication, intercession, nor other trauels, the Princes of these wrongfull Nations (vvhonely can and should repress and redresse) vvill doe iustice, or neglect to do their office; then because such a dealing imports a iust cause of lawfull hostilitie and warfare, I see not but that such a calamitie may and ought to be repressed, at least by these represalies and letters of Merque^q; specially, sith that cause, in effect, resembles a warre denounced without solemnities of clarigation.

^q Vide Bartol.
latè de represal.

And therefore, both according to the lawes of England, letters of Merque are allowable, and according to the old custome of Scotland; and the tenor of the Act of Parliament made by *James* the first of Scotland^r, concerning shipwrack, to be followed for a rule to such cursed cases, that is to say, that other Nations should haue the like fauour of vs, that they shew to vs.

^r c. 131. actor.

Now

Now beeing agreed that letters of Merque are lawfull, as they are by statutes, customes and reason, specially vpon a matter of great importance, and after a due warning, intimation, & one requisition; so that it be done by the Prince, and solemnly^f: then vvhath goods happen to be taken by that meanes, should be brought and presented as aforesaid before the Admirall^e; that a iust Inventarie may be taken therof, for diuerse good respects.

^f Per gloss. in c. episcopus. 18 dist. et DD. in c. si contra. et c. 1. de milite vasallo qui contumax.

^e Per l. si quis in seruitute. de furt. et l. ait prætor. parag. si debitorē. Quæ in fraud. cred.

TIT. XXVI.

Of Fishers, fishing, and traffiquers therewith.

Albeit hunting, hawking and fishing be of one kind, as subiect to a like law and liberty^a, because what wilde beast, foule, or fish be once taken by any man, commonly it becommeth his own proper by the lawes of Nations; yet is there a difference twixt these three: for, albeit hunting and hawking be almost euery where lawfull, yet fishing is forbidden in other mens ponds, stanks and lakes^b, as comparable with theft.

^a l. 1. in fin. de acq. rer. dom. et parag. fera in sti. de rer. diuis.

^b Liniuriarū 13. parag. fin. in fin. de iniur. Iacob. 3. act. 60. et Iacob. 5. p. 4. cap. 12.

Yea, now a-daies, in riuers, and in parts of the Seas neereft to the possessions of men hauing grant and in- festment from the king, may fishing be forbidden; but no priuate man, without the grant of the Prince, vpon any pretence, or allegation of long consuetude and prescription, may acquire the propriety of any such part of the sea, as to prohibit others to fish there also^c;

^c l. præscrip. de vsucap.

for such prescriptions onely pertaine to Princes.

^d c. 1. et 2. de
cler. venat. et c.
1. in cleric. et
mon.

^e Vide latè. act.
parl. Scot.

^f Vide statuta,
et cōstit. et act.
regum Franc.
Angl. et Scotiæ.

^g Vide statut.
Angl. et Scot.
et l^a Admir. de
France.
^h Jac. 6. parl. 6.
cap. 89.

ⁱ Jac. 1. p. 1. c. 11
Jac. 6. p. 7. c. 11.

^m Jac. 3. p. 10.
cap. 73.

To returne to the qualitie of fishing; sith it is not onely allowable to all sorts of persons^d, but also commendable, & alwaies to be preferred to all other trades and traffiques vpon sea, not onely for necessaries, but also for the great good and profit redounding therby; all ciuill and vertuous Princes haue diuersly forth-showne their care, for the entertaining and aduancing thereof: as, by ordinances to build ships & boats to that purpose^e; and by their wise appointing of certaine onely times for the fishing, as namely, of Salmon, vnder paines not onely of fynes, but also of forfeitures, and of death, according to the manner of the offence, and contempt of their decrees and statutes^f. Which Princes also (for the increase of fishes) haue, as it were with common consent, forbidden the making, setting, and vsing of crowes, yarrs, dammes, fosses, tramelers, parkings, dyking and herry-waters, in any waters^g where the sea ebbes and flowes, vnder paine of confiscation of all the goods of the transgressors in Scotland^h.

Yea, albeit that any man were of old infested with keeping of crwiffes, weares, & kiddles, &c. yet must he keepe the Saturdaies slop: that is, to lift the same from Saturday at after-noone till Monday; & also to make each heck or mesh of his crwiffe three inches wideⁱ, except for taking of smelts, loches, and such like that wil neuer be bigger: as also, for to set the same vpon the waters, that the mid-streame may haue the iust space of six foote wide, vnder the paine of fine pound^m. And thus farre concerning the maintenance and increase of fishes, by our Scottish lawes & custome.

It followeth, to set downe concerning the Fishers their safety and priuiledges. Wherein it is prouided, first, that all Ships sayling into the parts where Herring are taken, at least during the taking thereof, shall let downe saile after day light past, let their Anchor fall, and keepe watch with Lanterne and light, vntill day light appeare againe, lest otherwise the poore Fishers should be ouer-run, or their nets broken: their paine in Denmarke, is death to the transgressorsⁿ: and the Fishers are likewise forbidden to vse light in their fishing by night, lest they deceiue saylers with the false shew of a portⁿⁿ.

Likewise, lest any of the Fishers harme or hurt one another, it is diuerfly prouided, as also concerning the right measure of their nets in length and in breadth^o; as may be scene by the Statutes of sundry Nations. *Vid. statuta Anglia.*

ⁿ Vlpian in l. ne piscatores de incend. rui. naufr. ^o Vide l'Admirall de Franc.

And specially therefore it is agreed of long time since, by the Sea-farers on the Forth of Scotland^p; first, that no ground-drasse or drag-net, be set before March, nor vpon deeper water then fourteene fathome.

^p Vide Forman his Register.

Item, that none shall lie to their neighbors when he shall be asked concerning the length and depth of his tewe, when he is in driuing: neyther yet wittingly and wilfully to suffer his tewes and nets to flit, and run ouer one another, vnder the paine of ten pound for euery transgression of the premised articles.

Item aboue all, that from the Sun-set on Sunday, no man lay nor hale nets or great lines, or exercise any labour, vnder the foresaid paine.

Item, for the further encouraging of Fishers in the

West and North Isles of Scotland, there is a Statute that no other customes be sought of the Fishers in the said Isles, but onely the Kings customes; vnder the paines due to manifest oppressors against them who exact the same¹.

¹ Mar. p. 6. c. 34.

Lastly, concerning Fishers & traffiquers with fishes, it is ordained that not onely all fish slaine and taken neere to the coast of Scotland be brought and presented to the market places, where the takers or slayers thereof dwell²: but also all fishes taken in the North & West Isles or Firths, to be brought directly to the townes where the Fishers dwell (that the neede of the countrey may be first serued³) and presented to the market places: from which none may carry them away to pack and peil, but onely betwixt the houres of cleuen and two in the afternoone, vnder the paine of confiscation. In which markets, it is lawfull to the Provest and Bailiffes to set downe prices, and to compell the packer and peiler to sell againe for the need of the Lieges⁴. Which being done, they may transport the remainder where they please⁵. And in case they contemne, then their fishes to be eschete, two parts to the King, and the third to the Magistrate⁶.

² Iacob. 5. p. 9. c. 98.

³ Iac. 6. p. 4. c. 60.

⁴ Iac. 5. p. 7. c. 98.

⁵ Iac. 6. p. 4. c. 60.

⁶ Iac. 6. p. 6. c. 86.

Likewise, concerning the barrelling of fishes, it is ordeined that the measures prescribed of old shall bee kept: *videlicet*, each barrell of Herring, or of white fish, to be of twelue galons⁷; and the barrell of Salmon of fourteene galons, according to the measure of Hamburg⁸, vnder the paines of escheting thereof from the packer, & of five pound to be lifted from the Couper⁹. And therefore hoop irons to be made in each towne, for the triall and gaging thereof¹⁰. *Vid. statuta Anglia. Tit. of fishing, in the Abridgements.* TIT.

⁷ Iac. 5. p. 4. c. 57.

Iac. 6. p. 4. c.

147.

⁸ Iac. 3. p. 10. c.

276.

⁹ Iac. 3. p. 10. c.

76.

¹⁰ Iac. 3. p. 14. c.

190.

TIT. XXVII.

*Of the Communitie and Proprietic
of the Seas.*

HAuing of late seene and perused a verie learned, but a subtle Treatise (*incerto Authore*) intituled *Mare liberum*, conteyning in effect a plaine Proclamation of a libertie commune for all of all Nations, to fish indifferently on all kinde of Seas, and consequently a turning of vndoubted proprieties to a community; as the fift chapter therof at large discouers (wherin the vnknownen Authour protesteth, that he may for his warrant vse the authority and wordes of such old Writers as haue bene esteemed most mighty in the vnderstanding and iudging vpon the naturall condition of things here belowe) and the Discourse, beeing couered with the maintenance of a liberty to saile to the Indians; I thought alwayes expedient by occasion of this argument of fishing conteyned in my former Title, by Gods grace, to occurre thereunto; as manifestly direct, at least (in my weak sight) tending to the preiudice of my most worthy Prince and his subiects: and that not only by arguments deriued from the first verity of the nature of things, but also from his owne proofs, warrants, and their Authors.

And yet before I goe any further, I cannot passe the Authour his ridiculous pretence, in both Epistle and beginning of his Discourse; as for a libertie onely

to saile on Seas: a thing farre off from all controuersie, at least vpon the Ocean; specially, since passage vpon land through all Regions Christian, is this day so indifferently permitted to all of all Nations, euen to Turkes, Iewes, Pagans, not being professed enemies; and therefore much lesse to bee restrained on Sea in all respects. So that I cannot but perswade both my selfe, and other loyall subiects, that the said pretence is but a very pretence; and so much the more to bee suspected as a drift against our vndoubted right and propriety of fishing on this side the Seas.

Now remembering the first ground, whereby the Authour would make *Mare liberum*, to be a position fortified by the opinions and sayings of some olde Poets, Orators, Philosophers, and (wrested) Iuriconsults, that Land and Sea, by the first condition of nature, hath beene and should bee common to all, and proper to none: against this I minde to vse no other reason, but a simple and orderly reciting of the wordes of the holy Spirit, concerning that first condition naturall of Land and Sea from the very beginning; at which time, God hauing made and so carefully toward man disposed the foure Elements, two to swimme aboue his head, and two to lie vnder his feete: that is to say, the Earth and Water, both wonderfully for that effect ordered to the vpmaking of one and a perfit Globe, for their more mutuall seruice to mans vse: according to this, immediately after the creation, God saith to man^a, *Subdue the earth, and rule over the fish*: which could not be, but by a subduing of the waters also.

^a Genes. 1. 28.

And againe, after the Flood, God saith, *Replenish the earth*^b: and for the better performance heereof, ^b cod. c. 9. v. 1. God in his iustice against the building of Babylon, scattered man-kind ouer all the face of the earth^c; there- ^c cod. c. 11. v. 8. fore is it that *Moses* saith^d, *These are the Iles of the Nations diuided in their lands*. ^d cod. c. 10. v. 5. So that heereby is euident, that things here done, are not so naturally too cōmon; sith God the author of nature, is also as well author of the diuision, as of the composition: and yet how-so-euer, in his iustice as is said, yet in his mercy also and indulgent care, for the welfare and peace of mankind. For those are sentences both vulgar and sure, set down by the Romane Iuriconsults^e, *Cōmunio parit discordiam. Quod communiter possidetur, vitio naturali negligitur. Habet communio rerum gerendarū difficultatem*^f. ^e Vlp. l. qui neque. de reb. cor. qui sub tutel. ^f l. pater. parag. dulcissimè de leg. 2.

Afterward, the earth, by the infinite multiplication of mankind, beeing largely replenished, and therefore of necessitie thus diuided, and things vpon the earth not sufficient for the necessities and desires of man in euery region, followed of force the vse of trading vpon the seas; not onely for the ruling of the fish therein, according to the commandement given by the Creator at the beginning, but also for transporting of things necessary for the vse of man. For the which, & other causes aboue mentioned, the waters became diuisible, and requiring a partition in like manner vvith the earth; according to that of *Baldus: Videmus, de iure gentium, in mare esse regna distincta, sicut in terra arida*^g.

And thus farre haue we learned, concerning the cōmunitie and proprietie of land and sea, by him who is the

^g Ad legem l. de rer. diuis.

the great Creator and author of all ; and therefore of greater authoritie and vnderstanding then all the Grecian and Romane Writers, Poets, Orators, Philosophers, and Iurisconsults, who-so-euer famous: whom the author of *Mare liberum* protests hee may vse and leane to without offence.

^g 1. officior.

Now, sith the weaknesse of this his first and principall ground doth this way appeare; let any man iudge vpon the truth of that vvhich *Cicero* (his man) sets downe ^g, *Sunt priuata natura nulla*; and likewise of all other his authors their opinions, for the fortification of an originall communitie of things.

It followeth to examine the chiefe warrants of *Mare liberum*; and to consider how farre they may beare forth to a common libertie for fishing, on all seas indifferently.

^h pagina 25.

ⁱ L. iniuriarum.
parag: vlt. et
parag. si quis
de iniur.

The author cites *Vlpian*, a renowned Iurisconsult indeed, and *Martian* their sentences; alleaging ^h that *Vlpian* should say ⁱ, *Ante ades meas aut pratorium vt piscari aliquem prohibeam, vsurpatū quidem est, sed nullo iure, adeo vt contempta ea vsurpatione, iniuriarum agere potest. sz. prohibitus*. That is to say, if I should forbid any man to fish before my house, hee may mis-know such an vsurpation, and intend action of iniurie against mee, for a wrongfull staying him from fishing there.

^k d. parag. si
quis.

But as I read ^k, *Vlpian* his wordes are thus; *Sunt qui putant iniuriarum me agere posse*: that is, there are men who thinke, I may intend action, &c. It is true also, that *Martian* saith, *Nemo ad littus piscandi causa accedere prohibetur*^l. And yet neither of these two Iurisconsults, pronounceth absolutely in these cases, but

^l l. 4. de rer.
diuis.

vpon

vpon another higher warrant: & therefore *Vlpian* ads,
Sepissimè rescriptum est nec piscari, &c. prohibere pos-
se^m. That is, it is by writ most often answered, &c.^{m d. parag. si quis in fin.}
 Which *Martian* expounds most clearly, when he saith,
Nemo igitur ad littus maris piscandi causa accedere
prohibetur; and subioynes his warrant, *Idq; Diuus Pius*
*piscatoribus Formianis rescripsit*ⁿ: that is, No man is^{n d. l. 4. de rer. diuis.}
 forbidden to come to the sea side and fish; as the Em-
 perour *Diuus Pius* did write to the Fishers of Formi-
 an. So that you see the Emperours to haue been vvar-
 rants to these Lawiers, and their vvritten opinions,
 concerning the voyage of the sea.

Now, to passe the proprietie which heereby we see
 these Emperours did claime on the seas, I aske first, to
 whom did the Emperours write such resolutions? was
 it not to the professed subiects of their owne Empire?
 and what? euen the vsage of the seas, and coasts of their
 Empire, to be indifferently common to euery one of
 their owne subiects: and how? *Iure gentium*; that is,
 according to the law kept by all other nations, to euery
 one of their owne nation in like cases.

Moreouer, albeit these and other Romane Law-
 iers pronounce so, concerning the communitie of the
 sea-shoare, and coast, that priuate men may build hou-
 ses within the flood-marke, and appropriate them to
 themselves, according to that which *Neratius* writes,
Quod in littore quis adificat, eius fit^o: that is, vvhat^{o l. quod in lit- tore, de acq. rer. dom.}
 a man builds on shoare, it becommeth his owne; yet
 vpon this condition, *Tamen decretū pratoris adhiben-*
dū est ut id facere liceat, saith *Pomponius*^p: that is, pro-
 uiding the Prætor his decree be interponed ther-vnto;
 or that the Prince giue grant, as *Vlpian* writes^q; *Vel*
^{q l. quauis. de acq. rer. dom. q l. prohibere. parag. quod et- li. Quod vi auc- clam.}

ut princeps concedat. As for the remnant of these sorts of warrants alleaged for *Mare liberum*, sith the sing all one song for the common vse to the people, and proprietic to the Prince, if men wil but onely mark them; I need not stay further vpon them. So that euery man may see both the vse of the word *commun*, & the meaning of *iure gentium* among these Lawiers, where-vpon this *Mare liberum* appeares so to be founded, that it cannot be shaken. For, *commune*, there, is nothing else but *publicū, quasi populicū*; signifying a thing common for the vlsage of any of one sort of people, and not for all of all nations: according to that of *Modestinus*, *Roma communis patria est* ^r.

^r I. Roma, ad municipal.

Neither yet doth that word, *iure gentium*, meane any law set downe by common consent of all nations; but onely notes the example of the law, or custome of other nations: as if they would say, the libertie of fishing on our seas, and of other doing there and at shoare, should be common to euery one of the Romane Empire, like as the same is common to all of all other nations, on their seas, and their shoares.

Likewise, that of *Placentinus*; *Quod mare sit in nullius bonis, nisi salius dei*: that is, God is onely Lord of the sea; and so say we with king *Dauid*, that the land also is the Lords ^r. But that of *Faber* ^r, *Mare esse in primo iure quo omnia erant communia*, I neede no otherwise to refute now, then I haue done aboue already.

^r Psalm. 24.

^r Ad parag. litterarum, inst. de scr. diuis.

And these are the Authoers and warrants where-vpon *Mare liberum* inferres his conclusion; *Demonstratum igitur nec populo, nec priuato ius aliquod in mare competere posse, quum occupationem, nec natura, nec publica*

publici usus ratio permittat ". Which, how it follow- " Pag. 28.
eth vpon the premisses, let men iudge; sith neither these
his Authors make for him, neither yet the reason in-
serted in the conclusion beares out; which is, *quam oc-
cupationem nec natura, nec publici usus ratio permit-
tat*: that is, neither nature, nor the common need, suf-
fers the sea to be acquired in propertie to any occupa-
tion.

For answer, first concerning the nature of the sea,
as supposed impossibly occupable or acquirable; Is
this so thought because the sea is not so solid, as is the
land, that men may trade thereon, as vpon land? or
that it is continually flowing to and fro? Surelie, that
lack of solidity for man his trading thereon by foote,
shall not hinder the solid possession of it, farre lesse the
occupation and acquiring, if vvee will giue to the sea,
that which the Iuriconsults indulgently graunt to the
land, vvhich also cannot be denied. *Paulus* the Iuris-
consult saith *, *Qui fundum possidere velit, non uti-
que omnes glebas eius circumambulet, sed sufficit quam-
libet partē eius introire, dum mente et cogitatione hac sit
ut totum possidere velit usque ad terminum*: that is, it
is not needfull for him vvho vvould possesse himselfe
in any part of the land, to goe about and tread ouer
the same; but it is sufficient to enter-in vpon any part
thereof, vvith a mind to possesse all the rest thereof,
euen to the due marches. And vvhat can stay this to
be done on sea, as vvell as on land? And thus far con-
cerning the solidity.

* In l. possideri.
de acquir. poss.

As for the flowing condition of the sea, how-
so-euer it be liquid, fluid, and vnstable, in the parti-
cles thereof, yet in the vvhole body, it is not so: be-

Phil. 104. 9.

cause it keepe the prescribed bounds strictly enough, concerning the chiefe place and limits thereof.

Pag. 31.

VWhich discourse, giues vs occasion of force to answer to a scoffe cast in by the Author of *Mare liberum*, concerning the possibilitie also of marches and limits, for the diuision of the seas: *Mundum diuidunt* (saith the fore-said Author of *Mare liberum*) *non ullis limitibus, aut natura, aut manu positis, sed imaginaria quadam linea: quod si recipitur, et Geometra terras, et Astronomicum nobis eripient*: that is, they diuide the world not by any marches, put either by nature, or by the hand of man, but by an imaginarie or fantastick line: which kind of doing beeing embraced, the Geometers may steale away the earth, and the Astronomers the heauens from vs.

It is true, that there are not in euery part of the sea Isles sensible (as *Gernsey* is to England in the narrow seas) or sands (as the *Wasbes* at the West seas of England) nor rocks, or other eminent and visible marks aboue water, for the designation of the bounds (or laying-out the limits) of the diuisible parts thereof: but GOD, who is both the distributer and first Author of the diuision and distinction of both land and sea, hath giuen an vnderstanding hart to man for the same effect, as well as for all other necessarie actions wherein he hath to employ himselfe: so that to a very wonder, God hath diuersly informed men by the helps of the compasse, counting of courses, sounding, and other waies, to find forth, and to designe *finitum in infinito*, so farre as is expedient for the certain reach and bounds of seas, properly pertaining to any Prince or people.

Which

Which bounds *Bartolus*^a hardly extends and allowes² in *g. nullius. in tractat. de insula. 1a.* for Princes & people at the sea side, an hundreth miles of sea forth from their coasts*, at least; and iustly, if they exercise a protection and conseruacie so farre: ** Per l. notione de verb. Sig.* and this reach is called by the Doctors *Distriktus maris, & territorium*^a. It is true, *Baldus*^b esteemeth *pote- statem, iurisdictionem & distriktum*, to be all one.

To conclude then, since *Papinian* writes in *finalibus questionibus vetera monumenta sequenda esse*^c; what more eident monuments for our King his right in the narrow seas, then these Isles of *Gernsie &c.*? And for the Easterne seas, direct from Scotland, what is more anciently notorious then that couenant twixt Scottish men and Hollanders, concerning the length of their approaching toward Scotland by way of fishing?

And thus farre through occasion of answering to that alledg'd impossibility, of acquiring the Sea by occupation, because (as would appeare) of the vnfoli- dicie therof, for any foot treading. It rests to touch the other cause naturall, for that other impossibility, which may be the continuall fluxe and instability of the Sea; in such sort, that it would appeare not ay to be one and the selfe same body, but daily changeable. For answer, I must remember that which the Iuriscon- sult sets down so prettily^d: Suppose (sayes he) a certain Colledge of Iudges, or a Legion of Souldiers, or the particular parts of a Ship, or of a mans body, should so continually and often be changed and altred, that none of that first Colledge or Legion could bee found a- liue, nor yet any part of the Ship or body could be to certainly demonstrate, that it might be affirmed for

^a Gloss. in c. vbi periculum. pa- rag. porro. de electionib lib. 6
^b m l. si testa- mentū. de inst. & subst.
^c l. in finalibus. com. diuid.

^d In l. propones- batur. de iud.

the very same that it was at the first; yet if that Colledge or Legion bee in number full, and the ship or man whole and able in all the frame, they shall be accounted and esteemed not to be new, but to be the very same which they were at the beginning: euen so, howeuer the sea many waies & hourelly changes, in the small parts therof, by the ordinarie rush on land, mixture with other waters, swelling in it selfe, exhalation and back receipts thereof by raine; yet since the great body of the Sea most constantly keepes the set place prescribed by the Creator, I see not in this respect neither, wherefore the nature of the Sea should not yeeld to occupation and conquest. And thus farre concerning *Mare liberum* his last & great conclusion, against all appropriation thereof by people or Princes. I call it his last great conclusion, because of other two passing before, whereof the first is this; *Mare igitur proprium alicuius fieri non potest, quia natura iubet esse commune*^c: and for what reason? Euen because *Cicero*, *Virgil*, and *Plautus* haue said so. To whom I could also assent concerning the great, huge, and maine body of the sea. His next conclusion is this; *Est igitur mare in numero eorum quæ in commercio non sunt, hoc est, quæ proprii iuris fieri non possunt*^f: that is, The Sea to be of that order of things, which cannot bee appropriate to any man. His warrants for his conclusion also are the Roman Lawyers, whom I said to be wrested by *Mare liberum*; and therefore must shew the same, contrary to his purpose indeed. *Martianus*^g, as the Author of *Mare liberum* largely graunts^h, saith, that if any priuate man haue himselfe alone, by any lawfull space of time sufficient for a prescription, kept and exercised fishing in any

^c Pag. 21.

^f Pag. 25.

^g I. si quisquam diuers. & temp. præscrip.

^h Pag. 24.

any creeke or nooke of Sea, which they call *Dinerticulum*; hee may forbid all others to fish therein: which *Papinianus*ⁱ also confirmeth. The which, as I accept, so I would further demand of him, By what reason should a private man, who hath no other care nor respect but to himselfe alone, be thus priuiledged & preferred to a Prince? who not for himself, but for his people also in common, yea and for the safety of all traders pasing his coasts, with great charges and care protects and conserueth the Seas neereft vnto him: shall not this Prince be acknowledged, at least with the good which that Sea, conserued by him, offers so directly to him? And I pray you say, What lesse authority had *Leo* then the rest of the Roman Emperors, to grant to euery one in particular, hauing possessions at the Sea side, as much of the sea as was neereft against their landes^k, with the fishings therof? What then, shall not Princes be equalled, in these cases, with subiects? Or rather, haue not all Princes a like right & power within their own precinct & bounds, as these Roman Princes had?

ⁱ l. præscriptio de vñcap.

^k Nouell. const. 102. 103. & 104.

But now to drawe neerer to the chiefe point of our purpose, and so to the end thereof: as I accepted *Mare liberum* his former large graunt, so now also do I more heartily embrace the next, which is this; When after these his conclusions, he had said *in tanto Mari si quis piscatu arceret, insana cupiditatis notam non effugeret*^l: he subioynes according to that of *Cicero*^m, *Quando sine detrimento suo quis potest alteri communicare in ijs qua sunt occupanti utilia & danti non molesta, quid ni faceret*: and subioyns afterwardⁿ, *Et si quicquam eorum prohibere posset, puta piscaturam, qua dici quodammodo potest pisces exauriri*: that is to say, If the

^l pag. 30.
^m Off. 1.

ⁿ pag 35.

the vſes of the ſeas may be in any reſpect forbidden and ſtayed, it ſhould be chiefly for the fiſhing, as by which the fiſhes may be ſaid to be exhauſt and waſted; which, daily experience theſe twenty yeares paſt and more, hath declared to be ouer true: for wheras aforetime the white fiſhes daily abounded euen into all the ſhoares on the Eaſterne coaſt of Scotland; now forſooth by the neere and daily approaching of the buſſe Fiſhers the ſholes of fiſhes are broken, and ſo farre ſcattered away from our ſhores and coaſts, that no fiſh now can be found worthy of any paines and trauels; to the impoueriſhing of all the ſort of our home-fiſhers, and to the great damage of all the Nation. Whereby, I ſee at laſt, the Author of *Mare liberum* not ſo addiſt to ſerue any mans particular deſires, as to anſwere (forſooth) to his profeſſion of the lawes; that is, to allow the proper right for euery man and nation, and to hurt none; according to the three generall precepts of all lawes, ſet down by *Caius*°, and after him by *Tribonianus* P: *Honeſtè viuere; alterum non ledere; Quis ſuum cuiq; tribuere*: whereof the ſecond tries and rules the reſt; according to the vulgar ſaying out of *Pomponius* q, *Neminem debere cum alterius damno locupletari*: and that of *Tryphonius* r, *Ex aliena iactura lucrum haurire non oportet*. And therefore I would meet him with his deſerued courteſie; euen to proclaime *Mare liberum* alſo: I meane that part of the maine Sea or great Ocean, which is farre remoued from the iuſt and due bounds aboue mentioned, properly perteyning to the neereſt Lands of euery Nation. *Atq; ita eſt mare vaſtum liberrimum.*

° in l. iuſtitia. de
rer. diuiſ.
P Parag. iuris
præcepta. de
iuſt. & iur.

q l. nemo. de
reg. iur. & l. 14.
de cond. indeb.
& l. iure. de iure
dot.

r l. reſcriptū de
diſtract. pig.

TIT. XXVIII.

Of Warfare-ships, and of the Captaines and
Companies thereof.

ANd since we haue written aboue of priuiledged ships^a (amongst which the warfare-ships^{Tit. 22.} of Princes are first and chiefe) and somewhat of the conseruacie of the Seas, in the last Title; I cannot heere passe the warfare-ships vnmentioned, albeit not in such large manner and measure as their employment now adayes requires. As for the matter fit for their building, and things necessary for their forth setting and preparation to Sea, I must referre the same to *Julius Ferretus*, and to *Vegetius*, who haue written largely thereupon. Some touch I haue heere subioyned, in the last Title of this Booke, concerning the materials: as likewise somewhat is premitted concerning their priuiledges, in that Title of priuiledged ships. Therefore would I heere set downe (but very briefly) some thing concerning the Captaines, Commanders, and Companies of the Prince his warfare-ships, the graces and vertues required in them, with their duties, power and preferment.

Captaines of Princes warfare-ships should be men, first, fearing God, because they must continually walke in the midst of the wondrous workes of God. Next, they should be stout, hardy, and couragious. Thirdly, vigilant, diligent and carefull; and therefore very temperat on Sea^b: specially, because their employment, as^{Tit. 22.} it is full of hazard and danger, euen so are their occasions

sions and opportunities suddaine and momentanie. Therefore their commandement and power ouer their company, not onely surpasseth the power of Masters and Commanders of priuate ships, but also that of the Captaines on land; and therefore their honour and estimation euery way higher also, because of their greater charge, care, and hazard. Their duety toward their company, is first, that they chuse such as be free from haynous and scandalous offences^c. Next, that they suffer none of their company to be idle, but to punish as well the sluggard as the rebellious^d: yea, euen those who are irreuerent towards them^e; and againe, should with all louing care see to the due food of their company, heare their mutuall plaints, hold them in peace by all obedience, visit, refresh, and with all helps comfort the hurt and diseased^f. As for the Captaines their other ducties to the Prince and Admirall, with their owne priuiledges, they are all gathered out of olde customes, and at large set downe in that Booke called *L'Admirall de France*.

^c per l. 4. de re
militar.

^d per l. 6. cod.

^e per l. 13. cod.

^f per l. 12. cod.

TIT. XXIX.

Of Watermen and Ferriers.

^a per l. 1. parag.
si furt. aduers.
maut.
^b l. 1. & l. cum
nauarchorum.
C. de nauicul.
lib. 10. & l. licita
de public.

Ferryers and Watermen are bound to serue all true Lieges for their due fare^a; so that they may be compelled thereunto^b: and most iustly, because it was in their owne hand & power from the beginning to giue and apply themselves to that calling and trade, or not. And if therefore they faile, it shall be

be, according to the lawe of Scotland, a point of ditty or inditement against them in the first Iustice-court: and if they transgresse vnto the third time, they may be suspended from their trade^c, except they can allcadge a iust cause; as, of feud or hostility.

^c Iac. 3. parl. 13.
^c 95.

Item, if is ordained, for the easier boating and landing of men and beasts, that Ferriers make, and haue ready, fit and conuenient bridges, or else to lose their Boats^d.

^d Iac. 3. parl. 31.
^c 20.

Lastly, Ferriers and Watermen are no lesse bound, than Skippers and Masters of ships, to render againe what-euer they receiue to bee carried within their Boats^e.

^e l. 1. parag.
naut. caupon.

But concerning their ordinary fares and hires, it is neither needfull nor expedient in this place to recite the diuerse statutes made therevpon; because that first they are at great length set downe in the Statutes of England and Scotland: next, because their fraughts haue been, according to the rate of times, changed and altered euen to the triple, as specially in Scotland^f. So that now also, according to the condition of this time, their portage, fraughts or fare, may be of new considered by his Maiestie, or Admiralls, according to the qualitie of the boats, and the space of passage & time, either shorter, longer, or hazardfuller, during their seruice; but with a due *Prouiso*, for the repressing of their rude and vnciuill manners. For truly, if the Roman Iurisconsults might of olde by any reason call Mariners, in generall, *Pessimus genus hominum*^g (which in these later dayes for the most part is amended, partly through Christianitie and ciuill conuersation, and partly by good lawes, praise bee to God)

^f Vide act. Iac. 3.
parl. 3. c. 20. &
parl. 7. c. 61. &
Mar. parl. 5.
^c 21.

^g Vide tit. naut.
caup. et tit. furt.
aduers.

then may wee now vse that same still, at least against the most part of Watermen and Ferriers; as requiring to be reformed, or at least by correction repressed*.

* Secund. l. 3.
naut. caup.

TIT. XXX.

Of Shipwrights.

TO conclude this Treatise, there remaineth a speciall sort of persons to bee considered and respected, as the forgers and framers of the instrumentall causes of all Sea-faring; to wit, Shipwrights, and builders of Shippes or Boats, called by the Romans, imitating the Grecians, *Naupegi*: and by the Italians, following the later Grecians, *Calafatti*, as is above described^a; and therefore subiect to the iurisdiction of the Admirallie^b (as accountable to the Admirall and his Iudges) as accessories of sea causes, for their skill, diligence, and dutifull discharge in euery respect, by a frame not onely likely and comely, but a work also strong, ticht, & durable: or else they must vnder-go the paines of the law, called *Lex Aquilia*; that is to say, all costs and scath happening by their vn-skilfulnesse, negligence, or what-euer other fault or amisse^c.

^a Tit. 6.
^b Per diplom.
admiralior. v.
triusque regni.

^c Per T. T. ad
l. Aquil.

^d Per l. 2. de
naut. firm. et
per Vegetium
de re militar.

And therefore, first touching the materials, they should not onely furnish the same good and sufficient, but also, if the furniture pertain not to them, they must refuse to take from the furnishers badde and vnmeet geare and stufte for the worke^d. As for example, Aller, Beech trees, and such like bricke and naughtie tymber

ber for salt-water, or for the seas. Neither should they put greene tymber in worke; but ought to fore-see if they can, that their wood be cut downe either at the wane of the Moone, and in the deepe of VVinter, or at such times as experience declares wood to be most solide and durable. For tymber cut at the contrarie times, is commonly full of moysture; and therefore beeing afterward dryed, becomes clung, and open to receiue water.

The like care and skill is required in the iron, and all other necessities, to the end that the works may proue strong, durable, right, and comely. This beeing done, it resteth to consider their hires and fees: which because they ordinarily depēd on the cōditions agreed vpon with the party, which also commonly is cavelled withall before a full performance of their worke, vpon surmises and quarrels; therefore to occur to all such doubts and discords, the contracts of such bargaines, should be (after the example of other sea-faring dealings) made before the Admiralls deputie, or Iudge, and registred in their bookes ^d.

Last of all, as Shippewrights were of old ^e, so are they also of late, forbidden ^f, vnder paine of treason, to communicate their skill and Art to enemies and barbarous people.

Likewise, they are forbidden (as are also all other societies of handy-crafts-men and trades-men) to conspire among themselves to enhance their wages, or hire, or to receiue excessiue wages ^h.

FINIS.

^d Vide sup. of the Admirall Clerke.

^e l. fin. C. de pœn.

^f Vide de off. Adm. Ang.

^g Vide C. de monop. et ibi. DD.

^h Vide de off. Adm.